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## Current Topics.

### The Lord Chancellor.

WE ARE GLAD to see the announcement in *The Times* of the 1st inst. that "Viscount CAVE, who is staying at Burnham, Somerset, with Lady CAVE, is now much improved in health, and will return to Wardrobe Court, Richmond, early next month, and resume his duties as Lord Chancellor." This leaves it a little doubtful to which month—October or November—reference is made, but it may be hoped that the long rest which Lord CAVE has had may, notwithstanding his illness, be the prelude to a period of renewed strength. There are heavy and important tasks awaiting him, and not least the final approval of the drafts of the Law of Property Consolidating Bills, and their introduction in Parliament. In whichever House they are introduced they must be under the Lord Chancellor's care, and for this Lord CAVE has qualifications which could not easily be found elsewhere.

### The Plymouth Meeting.

THE MEETING of the Law at Plymouth, apart from the opportunities of social enjoyment which were much appreciated, produced a very interesting series of papers. Upon the address of the President we make some observations elsewhere. It is a little singular that the Annual Provincial Meeting of the solicitors' branch of the profession furnishes the only occasion for a review of the matters of legal interest during the past year. But its importance in this respect is well recognised, and the address is looked forward to as an annual event of much interest. On this occasion Mr. DIBDIN varied the usual discussion of purely legal or professional topics by a very timely survey of the position which law holds in modern life. The tendencies which he deprecates are, it may be hoped, only temporary. Law and respect for the law are the only foundations on which social order can securely rest; first in the State, and then, in a widening sphere of influence, between States.

### The Encroachments of the Executive.

WE ARE UNABLE at present to notice all the papers, but the one which Sir KINGSLEY WOOD read on "The Judges and the Executive," is perhaps of most public and permanent interest. We need not discuss the exact extent to which "Dora" was necessary or justified during the war, but at any rate, it—or she—rested solely on war conditions, and in accordance with the maxim *cessante ratione cessat lex*, the end of the war, or of conditions incident to its ending, should have seen the end of Dora.

But the executive authorities have found great difficulties in laying down the powers which the war created, and it seems that there are Defence of the Realm Regulations still operative. These, however, are of little importance. What is of importance is the attempts made by the Executive to assert non-existent powers, and of these and their fate in the Courts Sir KINGSLEY WOOD gives a series of examples. He does not mention the names of his cases, so that the perusal of his paper is a sort of guessing game. It is easy, however, to identify them. We all know, for instance, how it came out in the case of the Irish Deportees in the Court of Appeal—*O'Brien's Case*—that the Executive had tried to bolster up their case after the proceedings had commenced by the issue of Orders in Council. But the encroachment on the liberty and rights of the individual is not a thing of the past only—"portion and parcel of the dreadful past." Sir KINGSLEY has the present in view also—the very questionable additional powers sought in the Criminal Justice Bill, and the treatment of the right to trial by jury in civil cases in the Administration of Justice Bill. Both of these Bills are coming on in the Autumn Session, and it may be hoped that a means will be found of preventing the anomalies as to the right to a jury of which Sir KINGSLEY WOOD gives examples, while continuing the settled practice of reserving for a judge alone cases which in their nature are not suitable for a jury.

### The New Rent Restriction Act.

ONE OF THE most interesting of the papers was that of Mr. E. A. ALEXANDER, of London, on the Rent Restriction Act which has just become law. Mr. ALEXANDER commented with some severity on the conduct of the Government in the circumstances which led up to the introduction and passing of this statute. As is well known, in July, 1921, a Committee, under the chairmanship of Sir HENRY NORMAN, was appointed to consider the operation of the Rent Restrictions Acts, and to advise as to their continuance or amendment. THE SOLICITORS' JOURNAL pointed out at the time that this Committee was weak in legal representation and of a very official character: not a single legal practitioner, solicitor or barrister, with any wide practical experience of the Acts was placed upon it, nor was any one of the gentlemen who have written text-books upon it, and who probably are the only persons thoroughly understanding all its ramifications, invited to sit as a member. The result was the use of Majority and Minority Reports, both utterly impractical. The Majority Report wanted to get rid of the Act as quickly as possible, overlooking the insuperable obstacles in the way under present economic conditions, and suggesting unreal steps to bring about that end. The Minority Report was simply a disguised attack on the rights of house-owners altogether, and made recommendations which must have ended in presenting occupiers with the substantial ownership of the premises. The Government shilly-shallied between the two reports, made a half-hearted attempt to give effect to the Majority Report, then withdrew on signs of the unpopularity of its proposal, and finally extended the Act until 1925 with very little alteration of any real importance. All this is true. But the Government had a very difficult task and probably no Government would have acted any more wisely.

### The late Registrar Barnard, K.C.

MR. BARNARD, K.C., Registrar of the Probate and Divorce Court, whose death has occurred this week, was almost the last survivor of those practitioners whose names were household words during the Golden Age of the Divorce Court, the period between its inauguration by Lord PALMERSTON and the death of QUEEN VICTORIA. For this latter date conveniently marks a transition stage. Prior to it, the Divorce Court had been essentially a court where wealthy men and women dissolved their marriages; there were other cases, of course, but these were chiefly undefended suits; the cost of divorce then made it almost as much a luxury for the rich as it had been half a century before in the days of *crim. con.* actions followed by a Bill in Parliament.

The result was that the practice was divided between a few specialists, who obtained high fees. But all this is changed. Facilities for divorce are now accorded to poor persons, and the discovery some twenty years ago of the "restitution" action, followed by disobedience, as a means of satisfying the double proof required from wives in divorce suits, has gradually made divorce almost a popular institution; the number of divorces has greatly increased; and the special practitioners of that court to-day are busy juniors who take a vast number of quickly-disposed-of cases and charge small fees. When a fashionable suit is pending nowadays, a leading common law silk is taken in, instead of a Divorce Court specialist, as was the old practice. Mr. BARNARD saw the transition take place; he enjoyed a vast practice, both before and after the new régime had come in. He was the soundest and solidest of lawyers, noted for his accuracy and the fact that he never made a blunder in his practice. The accidents of judicial promotion, which denied him the seat on the Bench which his reputation merited, meant his private loss but a public gain, for it gave the Probate and Divorce Division an almost perfect Registrar, one meant was ever ready to assist practitioners and litigants. His decease will be universally regretted.

### A Quartette of Famous Advocates.

THE NAME of Mr. BARNARD, indeed, almost inevitably recalls to the mind that brilliant quartette of famous advocates who during the late Victorian Age were his rivals at the Inner Court Bar: IDERWICK, K.C., FRANCIS JEUNE, GORELL BARNES, and BARGRAVE DEANE. IDERWICK, the only one who did not attain the Bench, was perhaps the most persuasive advocate the Divorce Court has ever known. He had a most extraordinary gift for converting into a pathetic and romantic narrative some squalid and sordid story of domestic squabbles. It used to be said that no woman knew how greatly she had been wronged until she had heard IDERWICK conclude his opening speech on her behalf. JEUNE, of course, afterwards Lord St. HELIER, and President, was the most fascinating and interesting personality of the four; he was also a conspicuous figure in Society and at one time in Politics as well. GORELL BARNES, afterwards Lord GORELL, was a true-born Englishman of the bull-dog breed, grim, tenacious, defiant, pursuing with unwearied persistence any cause which appealed to his earnest and human spirit, advocating divorce reform from the Bench, and heeding not in the least the criticism which his opinions drew down upon him in a conventional age which held less advanced views on this matter than are now fashionable. BARGRAVE DEANE, most courtly and chivalrous of advocates, was not altogether so satisfactory as a judge, for his strength of sentiment occasionally obscured his judgment. It is interesting to note that three of these four became judges in their own division, a great contrast with the present-day state of affairs; for the last four Presidents have been King's Bench practitioners, and Mr. Justice HILL, the present judge, was essentially a Commercial Court practitioner. Curiously enough, too, the judges of this division seem generally to prefer sitting in the Admiralty Court, leaving divorce causes to be tried by common law judges lent by the King's Bench Division.

### Lord Birkenhead's Judicial Work.

THERE IS a very interesting estimate of Lord BIRKENHEAD'S Judicial Work as Chancellor in an article by "Jurist" in the current number of *The Empire Review*. It is based on a collection in one volume of most of the judgments delivered by him during his tenure of office, but we do not remember to have seen any announcement of it, and since the article does not give the title and publishers, it is perhaps only printed for private circulation. The writer has the highest opinion of Lord BIRKENHEAD'S judicial capacity, and says that, coming with a past not exactly suggestive of the judicial mind, he at once established "an unchallenged predominance." "It was a searching ordeal to be called upon to preside over the deliberations of the Supreme

Courts of Appeal for the United Kingdom and the Empire, composed as these courts were of the ablest and most experienced judicial minds of the day, including an unusual array of ex-Lord Chancellors; but, alike in the House of Lords and in the Judicial Committee of the Privy Council, Lord BIRKENHEAD acquired from the outset an easy supremacy." The article has an able survey of the qualities that make for judicial eminence, starting from BACON's statement in the Essay on Judicature of the four parts of a Judge: "to direct the evidence; to moderate length, repetition or impertinency of speech; to recapitulate, select and collate the material points of that which hath been said; and to give the rule or sentence." And the conclusion is reached: "To be a good judge thus calls for the exhibition of high ethical as well as intellectual qualities. But to be a great judge demands in addition the indefinable gift of genius." The writer does not attempt to assess Lord BIRKENHEAD's final position in legal estimation, but some of his best known judgments are noted, without, as a rule, the names of the cases; these being, perhaps, unsuited to a Review appealing to the general public. They include the judgment on the legality of bequests for masses for the dead; on contributory negligence in *S.S. Volute*; on drunkenness as a defence to a criminal charge; on Scottish conveyancing and the Crown's feudal dues. The last seems to have surprised Scottish conveyancers by the thoroughness of Lord BIRKENHEAD's suddenly acquired knowledge of the subject. Perhaps it was with like knowledge that, on the strength of a day's walk in early youth with "Williams on Real Property" as a companion, he took in hand the reform of English conveyancing—a task which his official life did not last long enough for him to see the completion of. The article is well worth reading, but seems to contain a slip in a story about Mr. Justice WILLS, which we leave to the curious.

#### Rates of Exchange and Foreign Creditors.

A CORRESPONDENT, whose letter we print elsewhere, criticizes our support of Mr. Justice ROWLATT's judgment in *Uliendahl v. Pankhurst Wright & Co.*, ante, p. 719, on a ground which is certainly very ingenious, though in our view fallacious. The question at issue is whether, in the case of a fixed debt or liquidated demand due from A in England to B in France, payable in France, and recovered in an English Court, the francs ought to be converted into pounds sterling at the date of the judgment or at that of the day on which the debt became due—or rather of the day after that day, since there is no breach of the duty to pay until the next day. Our contention was that the debtor commits a nominal breach of his duty to pay his creditor at the date when payment was due and was not made; therefore the doctrine of *restitutio* requires that the creditor should be paid such a sum as will put him in the same position as he would have been in had performance taken place when it should have taken place; this renders it necessary to award in English sterling a sum equivalent to the quantity of francs due converted at the rate prevailing at the date of breach. In order to clinch our argument we pointed out that it is the debtor's duty, in a normal case, to seek out his creditor and pay him; it is not the creditor's duty to demand payment. Our correspondent ingeniously replies that the debtor's duty to seek out his creditor and pay him does not apply when the creditor resides abroad; and he quotes a passage from COKE and one from SHEPHERD's Touchstone in support of this—fairly familiar—exception to the general rule. The exception, however, only arises when the creditor leaves the place where he resided at the date of the contract and goes overseas; it does not arise when he was resident abroad at the date when the obligation was undertaken, and has not left that place of foreign residence. For example, if A in England contracts a debt to B resident in England and B goes to America before date of payment due, then A is excused the duty of seeking out and paying B until B returns or nominates an agent in England to receive payment for him and notifies A to that effect. In the same way, if A in England contracts a debt to C resident in France, and C before date of payment due goes to America,

A is similarly excused. But so long as B remains resident in England in the one case, and C in France in the other case, A's duty to find his creditor and make payment to him continues to exist. This, in fact, is the normal case where contracts take place between persons resident in different countries, and we do not think that any decision or comment by any text-book writer contemplates the extension of the familiar exception beyond the case of a creditor who changes his residence to an overseas residence after the obligation has been contracted. In fact, the point has been incidentally and impliedly decided in that sense in the leading case of *Cash v. Kennion*, 1805, 11 Ves. 314, in which Lord ELDON delivered one of his most famous judgments. There the plaintiff was seeking to recover a debt contracted in Jamaica, but payable in London. The question was whether the cost of remittance should fall on the debtor or on the creditor, i.e., whether the debtor should pay in a draft at Jamaica rates or English rates. Lord ELDON held that the expense of the commission payable to the agent for remitting the money fell on the debtor, and observed: "I cannot bring myself to doubt that, when a man [in Jamaica] agrees to pay £100 in London upon the 1st January, he ought to have that sum there upon that day. If he fails in that contract, wherever the creditor sues him, the law of that country ought to give him just so much as he would have had if the contract had been performed." This clearly assumes that a person who contracts with a person overseas is bound, in the normal course of events, to pay that person at his overseas residence, and to bear the cost of remitting the money. It is, indeed, only common sense and common justice. Of course, the case is altered both in common sense and common justice when a creditor—after an obligation has been entered into—chooses for his own purpose to change his residence to one overseas.

#### The Franchise Qualifications of Married Women.

AN INTERESTING case, recently decided on appeal by His Honour Judge CRAWFORD, of the Edmonton County Court, *Pistor v. White*, Times, 29th ulto., incidentally shows that the new procedure—by which revising barristers, who could state a case for the High Court, are replaced by registration officers from whom an appeal lies to the county court judge, whose decision is final—is not necessarily a very satisfactory mode of arriving at correct determinations on points of law arising out of the Representation of the People Act, 1918. In this case a married woman owned a house in the Metropolitan Borough of Stoke Newington, in which she resided with her husband; he was not her tenant by virtue of any agreement, express or implied, although in his character of husband he paid the rates and taxes in respect of the premises. Really, in law, he is only the guest or licensee of his wife, permitted to reside, so long as she pleases and no longer, on the premises. That being so, he is not a ratepaying occupier, nor yet an occupying owner, entitled to the local government franchise as such—although by virtue of his residential qualification he is entitled to the parliamentary franchise. Now, by virtue of ss. 3 and 4 of the statute, it is clear that a married woman (eliminating cases that are not relevant to the above state of facts), is not entitled to the parliamentary franchise if she is the wife of a man entitled to the local government franchise in respect of the premises for which she claims. That was not the case here. Therefore the registration officer, it is submitted, rightly rejected the claim, but on appeal the county court judge—who is naturally not so familiar as registration officers with the peculiarities of a complicated statute—seems to have assumed that the wife, as owner residing on the premises, must be deemed to be an occupying owner, and therefore entitled to the parliamentary franchise as such. The reply seems to be that the statute confers no such qualification on married women. The judge's decision, however, stands, not being subject to appeal.

#### Delegatus non Potest Delegare.

THE IMPORTANT legal maxim, so often overlooked with disastrous results, *delegatus non potest delegare*, has just received a

new and striking exemplification in *Rex v. Electricity Commissioners, ex parte London Electricity Joint Committee*, 39 T.L.R., 715, which came before the Court of Appeal from the Divisional Court. The Electricity (Supply) Act, 1919, divides up the whole of Great Britain into areas called "Joint Electricity Districts," each of which is to have a "Joint Electricity Authority," which is to unify and control the supply and distribution of electrical power within that district. The object, of course, is to prevent overlapping and waste in what is necessarily an undertaking of a monopoly type. And the districts are chosen because they are deemed to be each a fairly complete industrial entity for electrical purposes. The object of the Act, therefore, would be defeated if the Joint Electricity Authority of a district were to do, what had been attempted in the present case, namely, set up a number of local sub-committees for special portions of the district, and entrust to these the carrying out of its functions. It has been "delegated" certain powers by Parliament, and it cannot sub-delegate these without express legislative authority. The creation of such committees, then, is *ultra vires*, and will be restrained by a writ of prohibition. An Order purporting to set up such a committee, and not yet confirmed under s. 7, by the Board of Trade and Parliament, so that it is still incomplete, was deemed a sufficiently completed *ultra vires* act, in this particular case to be restrained at once by such a writ.

## The President's Address.

THE present position of current legal questions is not such as furnish matter for profitable discussion, and in the very interesting address which Mr. DIBDIN delivered as President, at the Plymouth Meeting, he only slightly touched upon these and turned for his main subject to the more general question of the influence of law on society. The chief matters of current practical interest are legal education, rent restriction, the method of solicitors' remuneration, and the pending changes in the Law of Property, but as to each there is little at the present moment that the profession can do. It is a case of either waiting on events or waiting for results. Mr. DIBDIN described the passing of the Solicitors Act, 1922, with its new provisions for the attendance of articled clerks at Law Schools, as the most important recent event directly affecting solicitors, and no doubt it is. Oddly enough, the *Times*, in a leading article on Thursday, attributed what Mr. DIBDIN had stated to be the present low estimate of the law with the public, to "a deterioration of late years in the quality of solicitors, especially in the country, where business has become increasingly likely to be placed in hands less capable than formerly," and it is suggested that the better education of solicitors, which is to be the result of the new Act, may be expected to lead to improvement. We wonder where the leader-writer got this impression of country solicitors from. So far as we are aware, there is not the slightest foundation for it, and though better facilities for education may be relied on to maintain the standard of solicitors, in town and country alike, and to increase their technical efficiency, we doubt whether there is need for such improvement as *The Times* looks for. It is a well-known fact that increased knowledge does not always bring wisdom, and the assured position in the community which solicitors have held and still hold, as the wise and tactful guides and friends of their clients, will not be directly affected by educational changes. Certainly, let knowledge grow from more to more, but the bedrock of character is for the solicitor an asset more valuable still.

Nor in the other questions referred to above did Mr. DIBDIN find matter for extended comment. We have rent restriction for another two years; in a modified form it may last longer. A well-meaning and capable Minister has made changes in the Act of 1920 and has set landlords and tenants, and their advisers, and the Courts, new problems. It has been a difficult subject ever since it was introduced by the Act of 1915, but Parliament

has for the present said the last statutory word, and the coming year will show whether the way of much-harassed landlords and tenants alike has been made easier or more difficult. Mr. DIBDIN naturally objects to the continuance of restriction as to mortgages, and he regards entire freedom, as soon as it is practicable, as necessary for any real return to prosperity. But at present Parliament regards it as impracticable. On the improvement in the method of solicitors' remuneration there is equally little to be said. Mr. DIBDIN once again exposed the absurdity of the present system, but the Report of the Committee which inquired into it—on the initiation originally of the Liverpool Law Society—has, we believe, not been published, and there seems to be some objection to the profession knowing its contents and the attitude to it of the Lord Chancellor. And as to the Law of Property Act, it is quite impossible to have any profitable discussion at the present time. It is common knowledge that the Act of 1922 in its existing form will never come into force. It is probable that a year's consideration has revealed many defects in it; and when these have been removed and the Act split up into parts, and each part consolidated with the cognate statutes—Conveyancing, Settled Land, Trustee, Land Transfer, and so on—it is likely that there will be a formidable array of Bills for Parliament to deal with. But any useful discussion of the new system is impracticable until the Bills have been introduced and are open to professional criticism.

From these technical legal questions Mr. DIBDIN turned to the more general question of the influence of law on society. He surveys society and finds it deteriorating. The significant thing is that law—to repeat the statement we have referred to above—has never before stood so low in public estimation; in particular, on the great fundamental questions, reverence for marriage and for human life, there is a loosening of moral standards. As to marriage, we have the greatest sympathy with Mr. DIBDIN's views, and none the less that they may be described as Mid-Victorian. But we doubt whether the loosening of the marriage tie has any real effect on the great mass of the people. The Divorce Court and the newspapers reveal unfortunate phases of life, but society rests on the 999 happy and successful marriages, and not on the one in a thousand which in its ruin comes under the glare of publicity. None the less, in the survey of law in its social aspect, the sanctity of marriage has a fitting place. For notable examples of indifference to human life, Mr. DIBDIN went to America, where it is said 85,000 persons have since 1910 lost their lives through violence. But America has its own problems, and it is, perhaps, safer for us not to touch them. Indifference to life in recent times is not confined to one country, and with us the pleasure and recklessness of a few and the interests of manufacturers appear to rank higher than the safety of the individual. In these matters it is clear that law should reign supreme. Whether it has not forfeited some of its influence by intruding into spheres which are better left to morality and private opinion is a question on which Mr. DIBDIN uttered a note of warning. "One plain reason for the present contempt of law is the indiscreetness of lawgivers in their futile attempt to make men perfect." And yet when the great mass of the community have made up their minds, the law is a useful means of bringing in the rest and creating in them the civic conscience which is so frequently wanting. In his discussion of the effect of law on society Mr. DIBDIN was treading in the steps of Lord SHAW, to whose American addresses we called attention lately, and his handling of the subject showed a wider outlook than solicitors usually find in Presidential addresses.

Mr. Henry P. Arnholz, of 62, Fairhazel-gardens, N.W.6, writing to *The Times* (29th September), says:—"In your memoir of the late Viscount Morley you refer to his having been at school at Cheltenham. The late peer was also one of a very distinguished group of men (including the late Sir Arthur Charles, the late Chief Rabbi, the late General Sir E. H. Collen, Richard and Arthur Chamberlain—Joseph Chamberlain had left a year or two before—and others) who were at University College School, London, in the years 1853 and 1854."

## Recent Developments of Mercantile Law: Damages.

### VIII.—Miscellaneous Matters.

(Continued from p. 900, and concluded.)

In this concluding article it remains for us to collect and summarize those features in our scheme, as outlined in the first article, for which we have not found space in any of the preceding compartments of the series. Of these remnants there are five: (1) The doctrine of "Mitigation" in its modern form; (2) The Recovery of costs as part of damages; (3) Damages in Arbitrations; (4) Liquidated Damages and Penalties; and (5) Statutory Damages. These we will now discuss very briefly. The first we had intended to discuss at greater length; but, as a matter of fact, it has been referred to so frequently at different stages in previous articles that a lengthy treatment now would involve much wearisome repetition. Moreover, we have already printed a full and lucid letter from a correspondent discussing one of the more disputatious aspects of the principle. So we will content ourselves, for the purpose of this series, with the merest summary of the rule and its working.

#### 1. The Doctrine of "Duty to Minimize Damages."

Although the "Duty to minimize one's damages" has been greatly elaborated and applied in unexpected directions by recent decisions, it is not in itself by any means a novel doctrine. In pre-war days, however, it was generally regarded as simply a very unimportant part of a larger doctrine known as that of the "Mitigation of Damages," and it was not supposed that it could have much application in practice. Its wide extension is due chiefly to the fact that, under war conditions, breaches of contracts as the result of changing conditions were inevitable; these could not always be justified either on the "frustrated voyage" principle, nor yet under the protection afforded by the Defence of the Realm Amendment Acts; hence efforts were made by practitioners and judges to find some other legal ground of preventing the hardship likely to arise from a too rigorous application of the duty to perform a contract. The "Mitigation of Damages" rule proved helpful, and hence it became the subject of judicial attention, logical analysis, and extension to previously unsuspected spheres of applicability.

Put shortly, the rule is this: Where A and B enter into a contract, or stand in some non-contractual relation to one another, that relation is to be regarded, *not* as an external bond or chain fastened upon each as a burden, but rather as a tie which unites them for their mutual advantage—like the rope which fastens together a band of Alpine climbers. In the normal case, it is for the advantage of both parties that the bond be kept tight. But sometimes it is for their advantage to unloose it, in which case the parties usually agree to a novation of the contract and the substitution of another contract. But occasionally it is for the advantage of one party to loosen the bond, but for the other party to hold it tight; i.e., it may be to A's advantage to break the contract, but B's advantage to hold him to his bargain. In such case, the newer principle is that A has a sort of not-very-clearly-formulated natural equity to break his contractual promise to B, provided he adequately compensates B for the loss the latter sustains; and on B is imposed a similar not-very-clearly-formulated natural duty to accept such compensation and to act in such a manner as to ensure that the loss A will have to indemnify him against will be as low as possible. In the phrase of Lord SELBORNE, A is not a *caput lupinum*, a contract-breaker is not an outlaw, whom one may ruin at one's pleasure; he is to be regarded with sympathy and helped to break his contract in the way least ruinous to himself, provided always it sufficiently protects the innocent party against loss. If B refuses to assist A in this way, but stands on his bond, like SHYLOCK, he will be deemed—as a rule but not necessarily always—to have acted unreasonably, to have violated the spirit, if not the letter, of the

contractual bargain, and to have subjected himself to a quasi-equity disentitling him to recover any unnecessary addition to the loss, and therefore the damages, due to his unreasonable conduct.

Such seems to be the rule as now accepted and enforced in the courts. But what is its origin? It is really derived from a very natural extension of the principle of "Natural Damages" as explained in our second article. The object of damages is "*Restitutio*," i.e., to put the aggrieved party in precisely the position in which he would have been had the contract been carried out, or the tortious act complained of never occurred, so far as damages can work such a restitution. This *Restitutio* we further elaborated as the recovery of all damages actually suffered by the plaintiff and reasonably imputable to the conduct of the defendant—subject, of course, to conventional rules modifying the principle artificially in special categories of actions. Again, we saw that such damages are of three kinds: (1) all damages *directly* flowing from the breach, (2) all damages *indirectly* flowing therefrom but contemplated *ab initio* by the contracting parties, and (3) all damages, *indirectly* flowing from the breach, not contemplated *ab initio* by the parties, but which are the "natural and probable consequence of the breach." These three rules, we saw, fix the maximum amount the injured party can recover. He can never get more [in the absence of some special conventional rule] than he has actually suffered, but he may get less—for some part of his actual damages may not be "reasonably imputable" to the defendant's default. They may be imputable to (1) circumstances over which neither party has control, or (2) the intervening act of a third party, or (3) the folly or unreasonable conduct of the plaintiff himself: *Thornton v. Place*, 1832, 1 Mood. & R. 218; *Oldershaw v. Holt*, 1840, 12 A. & E. 590.

Such plea in "mitigation of damages" could always be set up by the defendant. He could show (a) that the subject-matter of the contract had diminished in value owing to the plaintiff's own misconduct, e.g., his breach of warranty: *Street v. Blay*, 1831, 2 B. & Ad. 456, and see Sale of Goods Act, 1893, s. 53; (b) that the plaintiff's conduct had aggravated the loss he had sustained: *Arden v. Goodacre*, 1851, 11 C.B. 371; and (c) that his own subsequent conduct had abated the wrong he had committed and had diminished the plaintiff's loss: *Cook v. Hartle*, 1838, 8 C. & P. 568; see also Libel Act, 1843, s. 1. From (b), namely, aggravation of the plaintiff's loss by his own unreasonable acts, it is only a short step, in logic at any rate, to include aggravation of the plaintiff's loss by his failure to take reasonable steps to replace a broken contract, of which he had ample notice, by another. Where A, for example, informs B beforehand that he cannot carry out a contract to deliver raw materials for B's factory, due six months hence, it is not reasonable for B to wait idly until the date has arrived and then buy up raw materials anywhere in a panic at extravagant prices. If he does so act, part of the heavy expenses he thus incurs are imputable, not solely to A's default, but partly also to his own imprudent conduct. He ought to look out at once for another contractor who will undertake to make the future deliveries at a reasonable price, and the difference between such price and the price named in the broken contract is usually all he will be allowed to recover.

Nay, more, if he cannot get such an alternative source of supply, he must consider whether any alternative kind of raw material will serve his purpose. If that proves not very practicable, then he must consider whether he can cancel on favourable terms some of his future orders and expenses at his factory so as to diminish his loss. In the same way, if an unpaid vendor finds raw materials refused and left on his hands, he must either attempt to dispose of them at once on favourable terms, or if that is not possible, must see whether he can himself use the materials in his own works for other purposes. A buyer, whose vendor refuses to deliver at the contract price, may even be under a duty to accept an offer of the vendor to supply the goods at a higher price, in order to reduce the loss; of course, he can claim the difference in the prices as damages for the breach: *Payzu, Ltd. v. Saunders*, 1919, 2 K.B. 581; see also *Credito*

*Italiano v. Swiss Bankverein*, 1916, 85 L.J. K.B. 1477. There is a similar duty imposed on a shipowner to minimise his loss from a breach of the charter-party: *Weir v. Dobell*, 1916, 1 K.B. 722. In the case quoted a steamer was chartered at a freight of 21s., and the charterers sub-chartered her at 28s. 6d., the market freight being 17s.; the sub-charterers committed a breach of the sub-charter which entitled the charterers to repudiate; they did so and cancelled their own charter-party with the shipowners; it was held that by so doing they had acted unreasonably and therefore could only recover from the defaulting sub-charterers the difference between a rate of 21s., not one of 28s. 6d., and the market rate of 17s. Other familiar cases to which we can only refer, since space forbids fuller analysis, are *Wertheim v. Chicoutimi Pulp Co.*, 1911, A.C. 301; *Brandt v. Morris (H. N.) & Co.*, 1917, 2 K.B. 784; *Macklin v. Newbury Sanitary Laundry*, 1919, 63 Sol. J. 337; *Re Vic. Mill, Ltd.*, 1913, 1 Ch. 465; *Marshall & Co. v. Nicoll & Sons*, 1919, 56 Sc. L.R. 615, H.L.; *British Westinghouse, etc., Co. v. Underground Electric Co.*, 1912, A.C. 673.

In connection with this interesting and elastic rule, the only other point we have space to mention concerns a difficulty it has created for the pleader. At the hearing, of course, evidence in mitigation of damages can be given by the defendant, provided he has pleaded it specially: *Wood v. Earl Durham*, 1888, 21 Q.B.D. 501. He may also cross-examine the plaintiff and his witnesses to show "mitigation": *Hill & Sons v. Showell & Sons*, 87 L.J. K.B. 1106, in which case the dissenting judgment of Lord DUNEDIN strongly criticizes the rule. He may even administer interrogatories beforehand requiring the defendant to state on oath whether or not he has taken certain steps to minimize the loss, e.g., whether he had other contracts at low prices in respect of which he could have given larger orders, and such like matters. In other words, he may put to the plaintiff a fishing series of interrogatories forcing the latter to disclose the way in which he carries on his business. The limits of this right to interrogate are not clearly settled, although there have been several unreported cases in chambers in which judges of the Commercial Court have pushed the rule a long way. A clear decision of the Court of Appeal on this vexed question of practice is very much needed.

## 2. Recovery of Costs of Legal Proceedings.

It not infrequently happens that, as the result of the defendant's tortious act or breach of contract, the plaintiff is himself compelled to commit a breach of duty towards third parties, who sue him and recover damages against him. The question arises whether the plaintiff can recover the expenses (damages and costs) of such proceedings against the contract-breaking or tort-feasing defendant. Apart from express contractual bargain between the parties, this depends on whether or not such losses are the "natural and probable consequences" of the defendant's default. As a matter of *Restitutio in Integrum* such costs ought always to be recoverable. But conventional rules have somewhat affected the application of this principle, and the substantial result of the conventional principles is that four rules may be laid down:—

(a) An agent acting for his principal, and compelled by his duty to the principal to take or defend legal proceedings, can always recover such costs—unless he has acted unnecessarily and unreasonably, in which case the doctrine of "Mitigation" disentitles him, but the burden of proving this is on the principal;

(b) Wherever there is a contract of indemnity between A and B, and A, in the course of his contractual duties incurs costs, he can recover them against B, just as an agent can recover against his principal;

(c) In the case of other contracts than those of "agency" and "indemnity," one contracting party (in the absence of express or implied bargain) can only recover against the other the costs of taking or defending proceedings when these are either (1) necessary or (2) reasonable: *Henderson v. Squire*, 1869, L.R. 4 Q.B. 170; *Holloway v. Turner*, 1845, 6 Q.B. 928; *Cullen v. Wright*, 1857, 8 E. & B. 647;

(d) But the plaintiff must claim these costs in the course of an action for breach against the defendant; he cannot afterwards claim them in a subsequent action: *Furness, Withy & Co. v. Hall*, 1909, 25 T.L.R. 233.

## 3. The Award of Damages by Arbitrators.

Until lately it was a matter of doubt how far arbitrators, hearing a commercial case under submission by the parties, were bound to award damages in accordance with the principles applied by the courts. It was often contended that arbitrators were a "domestic forum" chosen by the parties to do justice, and therefore entitled to ascertain the damages by any equitable and convenient method. It must now be regarded as settled (1) that arbitrators are bound by all the rules which a court would apply in assessing damages; (2) that they are bound by the same rules admitting or excluding evidence and must give effect to them: *Re Enoch v. Laretsky*, 1910, 1 K.B. 327, per FARWELL, L.J., at p. 334; *Walford, Baker & Co. v. Macfie*, 1915, 84 L.J. K.B. 2221; and (3) that they have all the usual powers of the court to amend pleadings or admit new grounds of claim or defence after the matter has been referred to them: *Re Crighton and Law Car and General Insurance Corporation, Ltd.*, 1910, 2 K.B. 738; *Taverner v. Cuff*, 1907, 51 Sol. J. 248. It follows that they possess the same powers as the court to order (1) affidavit of documents, and (2) answers to interrogatories on the part of either party: *Kursell v. Timber Operators and Contractors*, 1923, 2 K.B. 202. The result is that arbitrators possess—and are peculiarly liable to exercise somewhat oppressively—the powers to require a plaintiff, against whom the duty to minimize damages is pleaded, to answer interrogatories which pry deeply into the general conduct of his business affairs,

## 4. Liquidated Damages and Penalties.

The parties to a contract may endeavour to exclude in two different ways the rigid operation of the ordinary law; they may provide for submission to an arbitrator, by which method they alter the character of the tribunal, but cannot alter the principles on which it is bound to act; and they may endeavour to exclude, wholly or partially, the application to the contract of the judicial methods of assessing damages. This is done by providing in the contract for the payment of fixed sums, either finally fixed or to be calculated on a named basis, in the case of breach. The most familiar example is the demurrage claim in a charter-party. Such a mode of liquidating beforehand damages which otherwise the court would have to calculate and assess after the event is perfectly permissible: *Public Works Commissioner v. Hills*, 1906, A.C. 368, 375. But they are not entitled to provide beforehand a penalty for non-performance of the contract; no subject can authorise another subject to exercise the Crown Prerogative of inflicting penalties upon him; and a sum which is not a pre-estimate of provable damage but a penal sanction is therefore irrecoverable: *Law v. Redditch Local Board*, 1892, 1 Q.B. 127. For the rules applied by the courts in distinguishing between Liquidated Damages and Penalties, the reader must be referred to the text books. But one or two recent mercantile cases should be noted: e.g., *Wall v. Rederiaktiebolaget Luggude*, 1915, 3 K.B. 66, which held invalid, as being a penalty clause, this phrase: "Penalty for non-performance of this agreement, proved damages, not exceeding estimated amount of freight"; and *Watts v. Mitsui Ltd.*, 1917, A.C. 227, which held that the clause just quoted could not cut down the quantum of general damages recoverable on ordinary principles. Reference may also be made to *Re O'B*, 1917, 2 I.R. 354, which discusses carefully the validity of a clause providing for payment of entire sum on failure to pay any instalment due.

## 5. Statutory Damages.

It is only necessary just to remind our readers that in certain cases damages are limited or fixed by statute, e.g., Limitation of Liability in Collisions at Sea, Double Damages in Distress-Breach cases, and the £500 penalty under the Habeas Corpus Acts.

J. H. MENZIES.

## Reviews.

## Stamp Duties.

## THE LAW OF STAMP DUTIES ON DEEDS AND OTHER INSTRUMENTS.

By E. N. ALPE, of the Solicitor's Department, Inland Revenue, Barrister-at-Law. Revised and Enlarged by ARTHUR REGINALD RUDALL, Barrister-at-Law. With Notes on Practice by HERBERT WILLIAM JORDAN. Seventeenth Edition. Jordan & Sons, Ltd. 15s. net.

"Alpe" is such an indispensable help to the draftsman, and is so well-known, that we need do no more than shortly note the appearance of a new edition. Since the doubling of the "Conveyance on Sale" duty, and the introduction of Voluntary Disposition duty, it has become more necessary than ever to consider at the outset of any transaction what it is going to cost for stamp duty. Especially is this so with voluntary dispositions, for many transactions which were formerly undertaken with only a nominal duty to pay may now inflict a heavy burden. Sometimes this is a quite unnecessary fiscal burden upon ordinary transactions, such as re-settlements, where there is really no ground for the imposition of the stamp; sometimes the imposition is purely vexatious and oppressive—where, for instance, a family arrangement is made in order to give effect to the known, but not legally expressed, wishes of a deceased person, testator or intestate. This involves the voluntary disposition of property, and attracts *ad valorem* duty. When Treasury requirements are not so insistent, it may be hoped that these matters will be reviewed. But meanwhile, in cases such as the above, and in other difficulties which arise in the ascertainment of the correct stamps on documents, the present work gives accessible and valuable information. Examples of this are the specimens of apportionment of the consideration on a sale of a business to a company, showing the amounts on which duty is payable (p. 143); and the similar estimate for duty on a marriage settlement (p. 234).

## Books of the Week.

**Partnership.**—The law of Partnership. By J. ANDREW STRAHAN, M.A., LL.B., and NORMAN H. OLDHAM, B.A., LL.B., Barristers-at-Law. Third edition. By J. A. STRAHAN. Sweet and Maxwell, Ltd. 10s. net.

**Company Law.**—A Summary of the Law of Companies. By T. EUSTACE SMITH, Barrister-at-Law. Thirteenth edition. By WILLIAM HIGGINS, Barrister-at-Law. Sweet & Maxwell, Ltd. 7s. 6d. net.

**Commercial Law.**—The Romance of the Law Merchant. Being the introduction to the study of International and Commercial Law, with some account of the Commerce and Fairs of the Middle Ages. By WYNDHAM ANSTIS BEWES, LL.B. (Lond.). With a Foreword by The Rt. Honble. Sir RICHARD ATKIN, one of the Judges of the Court of Appeal. Sweet & Maxwell, Ltd. 7s. 6d. net.

**Popular Fallacies.**—Explained and corrected (with copious references to authorities). By A. S. E. ACKERMANN, B.Sc. (Engineering) Lond. Third edition. With an introduction by Sir RICHARD GREGORY, Hon. B.Sc. (Leeds), F.R.A.S. The Old Westminster Press. 12s. 6d. net.

**International Law.**—The Principles of International Law. By T. J. LAWRENCE, LL.D. Seventh edition. Revised by PERCY H. WINFIELD, LL.D., Barrister-at-Law. Macmillan & Co., Ltd. 20s. net.

**Massachusetts Law Quarterly.** August, 1923. With Supplement. Massachusetts Bar Association, Boston, Mass.

**Bombay Law Journal.** September, 1923. 76 Meadow St., Fort, Bombay. Rs.1-8-0.

**Workmen's Compensation and Insurance Reports, 1923.** Part 2, containing Cases in the House of Lords, Court of Appeal, (England), Court of Session (Scotland), Court of Appeal (Ireland). Edited by W. A. G. WOODS, LL.B., Barrister-at-Law. Stevens and Sons, Ltd; Sweet & Maxwell, Ltd. Ann. sub. 25s. post free.

The Middlesex Insurance Committee on Monday fined a doctor £10 for neglecting to obey a call to a panel patient at 11 p.m. The doctor pleaded that he learned that the patient had been feeling ill since 5.30 p.m., and that the demand at 11 p.m. for an immediate visit was unreasonable. It was also decided that the doctor should pay £7 8s. 6d., the amount of the bill of the doctor who attended the patient on the night in question and afterwards.

## Correspondence.

## Judgments and the Rate of Exchange.

[To the Editor of the Solicitors' Journal and Weekly Reporter.]

Sir,—In your article under the heading "Current Topics" in the issue of THE SOLICITORS' JOURNAL of the 29th September relating to "Judgments and the Rate of Exchange" you refer to the principle that it is the duty of the debtor to seek out and pay his creditor on the date when the debt falls due. That principle, however, would have no application to the case which was tried by Mr. Justice Rowlatt, because in that case the plaintiff was resident out of the jurisdiction, and the principle which you have quoted only applies to cases in which the creditor is within the jurisdiction, or, to use the words of the case governing the point, "the debtor is not bound to seek out his creditor if he is not within the realm": See Co. Litt., s. 340, p. 210A; Shepherd's Touchstone, cap. 6, page 136.

REGINALD VAUGHAN.

41, Moorgate,  
London, E.C.2.  
1st October.

[See under "Current Topics."—Ed., S.J.]

## Judgments and Rate of Exchange.

[To the Editor of the Solicitors' Journal and Weekly Reporter.]

Sir,—Your editorial note on a letter of mine on the above subject suggests to me that your fallacy (as I regard it) is due to your thinking in sterling instead of in the particular foreign currency in which the creditor is entitled to be paid.

Take the case you put, A, owing B 1,000 francs to be paid in France, has to sue his debtor in England. In court he brings his witnesses to prove his *then* claim in francs. It is only at the last minute (properly speaking) it would be after a verdict had been found for A in francs) that it becomes necessary to convert into sterling, because English Courts cannot enforce a judgment in foreign currency.

ERNEST I. WATSON.

Norwich,  
29th September.

[We are indebted to our correspondent for his interesting letter, but the point appears to be sufficiently covered by the decision of Lord Eldon, quoted elsewhere in a current topic.—Ed. S.J.]

## New Orders, &amp;c.

## Opening of the Legal Year.

In connection with the opening of the legal year on 12th October, there will be a special service in Westminster Abbey at 11.45 a.m. Places will be reserved for the Judges, County Court Judges, King's Counsel and officers of the Supreme Court who may attend. The Dean will receive the Judges at the West Door and the service will be over at 12.30.

King's Counsel, officers and other judicial and official persons will enter by Dean's-yard, while the Junior Bar will enter by Jerusalem Chamber.

The Lord Chancellor's reception at the House of Lords will take place at 12.45.

## Ministry of Health.

## THE PUBLIC HEALTH (CONDENSED MILK) REGULATIONS, 1923.

The Minister of Health certifies under Section 2 of the Rules Publication Act, 1893, that on account of urgency the following Regulations should come into immediate operation and hereby makes the following Regulations to come into operation forthwith as Provisional Regulations:—

1. Notwithstanding anything contained in Article 1 of the Public Health (Condensed Milk) Regulations, 1923, Part II of those Regulations, so far as it relates to the sale, or the exposure for sale, by retail, or the deposit in any place for the purposes of such sale, of any condensed milk intended for human consumption, shall not come into operation until the 1st day of November, 1923.

2. These Regulations may be cited as "The Public Health (Condensed Milk) Regulations (No. 2), 1923."

A. B. MacLachlan,  
Assistant Secretary, Ministry of Health.

24th Sept.

The following circular letter, explaining the above Order, has been issued:—  
*Sale of Food and Drugs  
 Acts Authorities.  
 (England and Wales.)*

MINISTRY OF HEALTH,  
 WHITEHALL, S.W.1.  
 26th September, 1923.

#### CONDENSED MILK.

I am directed by the Minister of Health to refer to Circular 393 issued on the 4th May last, and to the Public Health (Condensed Milk) Regulations, 1923, a copy of which was enclosed therewith, and to state that representations have been made to the Minister that difficulties have arisen in consequence of the recent dock strike in disposing of stocks of condensed milk already in this country which do not comply with the Regulations, and that the operation of the Regulations should be postponed so far as regards retail sales.

After consideration of these representations, the Minister has decided to postpone until the 1st November next the operation of the Regulations in regard to the sale of condensed milk in this country by retail, and I am to enclose herewith a copy of the Public Health (Condensed Milk) Regulations (No. 2), 1923, which have been made to give effect to this decision.

The Regulations and this circular are being placed on sale and copies may be obtained through any bookseller or directly from H.M. Stationery Office, at the addresses shown below.

A. B. MacLachlan,  
 Assistant Secretary.

The Clerk of the Council,

or,  
 The Town Clerk.

## Societies.

### The Law Society.

#### ANNUAL PROVINCIAL MEETING.

The Forty-first Annual Provincial Meeting of the Law Society has been held during the week at Plymouth, Mr. R. W. Dibdin (London, President) taking the chair. There was a large attendance, and among those present were members of the Council and the ladies accompanying them, as follows: Mrs. R. W. Dibdin, the Vice-President (Mr. W. H. Norton, Manchester) and Mrs. Norton, Sir C. H. Morton (Liverpool) and Lady Morton, Mr. A. H. Coley (Birmingham) and Mrs. Coley, Mr. H. R. Blaker (Henley-on-Thames) and Mrs. Blaker, the Right Hon. Sir W. J. Bull, Bart., M.P., P.C., and Lady Bull, Mr. C. G. May, Mr. R. W. E. Lane Poole, B.A., Mr. W. W. Gibson, B.A., LL.M. (Newcastle-upon-Tyne), Mr. H. H. Scott, LL.B. (Gloucester), Mr. R. Farmer (Chester), Mr. C. Scriven, LL.B. O.B.E. (Leeds) and Mrs. Scriven, Lt.-Col. S. T. Maynard, T.D. (Brighton) and Mrs. Maynard, Mr. Charles Mackintosh, LL.D., and Mrs. Mackintosh, Mr. D. H. Herbert, M.A., M.P., and Mrs. Herbert, Mr. E. R. Cook (Secretary) and Mrs. Cook.

#### CIVIC RECEPTION.

The Mayor of Plymouth (Mr. Solomon Stephens, C.C.) and the Mayoress held a reception in the Guildhall on Monday. The assemblage was very large. Music was provided.

#### TUESDAY'S PROCEEDINGS.

The members met on Tuesday morning in the Assembly Rooms, Royal Hotel, when the Mayor presided, and in welcoming the visitors, referring to the subjects which were to be considered, he said he was pleased to think that the Society valued the liberty of the judges and were desirous of keeping them absolutely free from any interference by those who were in authority. The very security of our liberties was that the judges of the land should be able to maintain inviolate the freedom and liberties of them all.

The President moved a very cordial vote of thanks to the Mayor.

Mr. J. A. PEARCE (President of the Incorporated Law Society of Plymouth) seconded the motion, which was carried with applause, and the Mayor briefly responded.

#### PRESIDENT'S ADDRESS.

The President read his address as follows:—

It is my first duty and a very pleasant one to offer to His Worship the Mayor the very cordial thanks of The Law Society for the welcome he has given us and also to thank the Incorporated Law Society of Plymouth for their invitation to hold the Provincial Meeting this year at Plymouth and for the hospitable reception which we have received from them. It is a long time since we assembled here before—as long ago as 1891—and though I had not the pleasure of being here then myself, the tradition still

survives of the kindness and hospitality which was enjoyed by us then. On that occasion our distinguished past President, Mr. Melmoth Walters, who is happily still with us, presided, and I see from the records of the Society that many of our most valued past members, not to mention some who are still here, including among the former Sir John Gray Hill, Mr. Pennington, Mr. Gribble and Mr. Ellett, took part in our debates.

I cannot proceed with my address without a few words of tribute to the five distinguished members of the Council who have so recently been taken from us. The General Report records the services rendered to the Society by four of them, but only those who like myself have worked with them for many years can thoroughly appreciate their work and the loss that the Society and the profession have suffered by their removal. Mr. Samson has died since the Report was published, and has left an empty place which it will be difficult to fill. Though evidently suffering from bad health he attended the Council Meetings to the last and on, I think, the day before his death, expressed to me his admiration for Mr. Botterell's courage in attending so assiduously to his duties when he was aware of the precarious state of his health.

It cannot be doubted, I think, that the most important recent event directly affecting Solicitors has been the passing of the Solicitors Act, 1922, which requires every person articulated to a Solicitor after 31st December last (with certain exceptions) to satisfy The Law Society, before being admitted to his Final Examination, that he has during one year attended a course of legal education at a Law School provided or approved by the Society. It was obvious that it might be difficult for many articulated clerks to fulfill the requirements of the Act, there being no Law School within reasonable distance of their office. No effort therefore has been spared on the part of the Council, assisted most efficiently by the Provincial Law Societies, to supply what was wanting; and suitable Schools of Law are now springing up all over the country in addition to the Society's own School in London and the Law Schools of the Universities of Oxford, Cambridge, London, Leeds, Manchester, Liverpool, and Sheffield. It is to be hoped therefore that very soon the educational benefit of the Act will be enjoyed by all articulated clerks without hardship and without neglect of the all-important professional training which they are receiving in the office of their principals. Things have very much changed and greatly for the better in recent years when by the efforts of The Law Society legal education has reached its present dimensions. No doubt some of us remember Sir William Winterbotham's address in 1909, when he told us that the only examination which his father had to undergo was by a conversation with a learned Judge, who after remarking on the beauty of the Vale of Evesham, where he was articulated, and on the charming manners of his principal, certified him as fully qualified for admission as a Solicitor.

I am much tempted to discuss the Rent Restriction Act of 1923, and only refrain from doing so because it will be thoroughly dealt with in a paper which will be read to us at this meeting by one well qualified to deal with the subject. I will only say further that The Law Society did what they could, and not without success, to improve the Bill before it became an Act. The continued control of mortgages is the worst feature of the new Act. This control is absolutely unnecessary and uncalled for, as capital available for loan on mortgage at a reasonable rate of interest is now abundant and the continuance of control will decrease confidence and further divert capital from house building. This was pointed out by four members who signed a reservation to the majority report of the Rent Restriction Committee, but they were overruled. Another glaring anomaly might well have been removed. It is clear that houses over certain values do not come under the Act; therefore a mortgage on a house of a rental of say £105 in London could not be disturbed, whereas a mortgagor of a house of £106 rental could be given three months' notice to pay off. If a mortgagor mortgaged 1,000 houses of £105 rental he equally could not be disturbed, and there have been and are many cases in which this point has been taken and a wealthy mortgagor has sailed comfortably through the war paying an altogether inadequate rate of interest which under the present Act he will still continue to pay. In my opinion what we really want is entire freedom and though that is impossible for the moment, the sooner it arrives the sooner will prosperity return to the country.

The Law of Property Act in one of its aspects will be the subject of a paper which we shall have the benefit of hearing, and I have no doubt my successor, the Vice-President, will deal fully with it at Manchester next year, but we hardly know at present exactly what its form will be after consolidation and further consideration, and I must candidly confess that I am not sorry to avail myself of adequate excuses not to discuss it with you myself to-day.

The question of Solicitors' Remuneration has very fully occupied the Council and it cannot be denied that the present system is urgently in need of attention. What can be more

absurd than that a learned expert in some branch of Law should only legally be allowed to charge the same as his son who was admitted last week, or that critical advice on matters of vast pecuniary or personal importance which may influence the whole life of a client cannot legally be remunerated in any adequate manner, or that a house agent for handing a card, to view, over his counter may secure a commission far greater than that of the Solicitor who carries out the sale of his client's property. The Council has made unceasing efforts to get this important matter dealt with and you will see from the Report that progress has been made. Solicitors are much indebted to Lord Birkenhead for the interest which he showed in this matter as well as in all matters of Law Reform to which his attention was called by The Law Society during his tenure of office as Lord Chancellor, and I have no doubt whatever that his successor, Viscount Cave, will be equally interested in matters affecting Solicitors which are so closely bound up with the interests of the public.

I need hardly point out to you how false is the idea sometimes expressed by those ignorant of the subject that our profession is opposed to reform particularly when it may affect the question of costs. So far is this from being true that I can confidently affirm that all recent reforms of law or of procedure have been heartily supported by The Law Society and many of them have been suggested by it. There is no doubt room however for further reform and I will suggest one or two matters which require attention. For instance why should it depend upon the ignorance of a testator or the carelessness of the maker of his will whether his Solicitor, appointed his Executor, should be able to make ordinary charges for the professional work done by him? I suggest that the present law should be altered and that it should be unnecessary in future for any power to charge to be included in a will. Then again why when women have been admitted to public offices and to professions on an equality with men should a husband still have to pay his wife's costs of her petition for divorce, even though it may be unsuccessful, besides enjoying other privileges quite inconsistent with the equality of the sexes?

There has been much discussion as to the desirability of membership of The Law Society being made compulsory on all Solicitors and I have heard many arguments both for and against such a change. There can be no doubt at all however that it is highly desirable that all Solicitors should be members of the Society. The number of members is rapidly increasing, and I hope will continue to do so till not to be a member will become a matter requiring explanation.

Having dealt with purely professional matters it may not be out of place in a meeting like this to speak of Law in the most general sense. If law is that social agreement between neighbours and members of the same State on which public order and happiness depend it cannot be denied that mankind is to-day in no very secure position and what is perhaps worse never perhaps before has law stood so low in public estimation. There may be various reasons for this, but the principal one is that, whereas in all different forms of the early community the concept of law involved the idea of something fundamental that must not be altered or even challenged, that must be respected in all the changes from noble to popular government and *vice versa*, now the whole conception has been altered and law has become to a great extent not a matter of principle but a matter of expediency. There is no sacrosanct background (if we may use the expression), and with the elimination of religion the whole basis of Society has become precarious and indeterminate.

Ask yourselves what is the world's view generally on two of the great fundamental questions—reverence for marriage and for human life. It is idle to pretend that public opinion on these subjects is not undergoing gradual change. The attacks on marriage come mainly from people of education and culture and the principle of contempt has, happily, not yet reached the poor. Although they often disregard current rules about matrimony they have never ceased to respect those who keep them; let the gallery of any melodrama be witness to this. But for many of the *élite* marriage, once a divine ordinance made in heaven, has even ceased to be a civil institution; it is to be a matter of purely private taste and convenience. In no civilized community can this sheer individualism win the day. Unless we return to the horde or pack promised by communism there must be rules for civil wedlock, for legitimacy and for inheritance. Yet the traditional sanctities are plainly decaying. In lieu of sheep-like convention men and women pride themselves now upon selfish eccentricity. Modern fiction is admittedly to a considerable extent one huge commentary on the problems and scandals of domestic life and the inevitable triangle, and what used to be considered as merely decent and respectable is now slightly referred to as "early Victorian."

As for human life in modern times, the tendency is to cheapen its value. The extremist, so called, reforms are to a great extent based on a ruthless system of thinning out. The chief victims of the French Revolution came from the proletariat;

Lenin in the Cheka official massacres of over a million and a half of the peasant class believes in the same necessity if communism is to be made a success. Only a few weeks ago we were informed in a Report submitted to the Annual Meeting of the American Bar Association by a Special Committee dealing with law enforcement that since 1910 85,000 Americans have lost their lives from being poisoned, shot or stabbed or from otherwise unlawful injuries. It is estimated that during last year there were 7,850 murders and 6,700 cases of manslaughter, making a total of over 14,000 cases of unjustifiable homicide in the United States. The Committee attributed the increase in crime to the "apathy and indifference of the American people."

It is surely a very serious symptom of the trend of opinion that law is now thought to be something which may be properly "jockeyed" or evaded if it can be done with impunity. The lawlessness of the American boot-legger is a new feature in civilization. Never before has the honest middle-class entered into systematic law-breaking as a pastime or even as a duty.

Law is to many, perhaps to most of us here, a subtle study, a great profession, an engaging and intricate science. But it is also, in a nobler sense, the highest and most essential product of man's moral conscience and social instinct. Rightly perhaps divorced from religion, it is nevertheless in a sense always supernatural and cannot be safely degraded to a mere matter of expediency, compromise or improvisation. There is great danger of the greater issues in which law supports current morality being compromised by unedifying disputes about legal coercion in lesser matters. Law making should not become a perilous see-saw between the party in power and the reactionaries who will soon take their place.

One plain reason for the present contempt of law is the indirection of lawgivers in their futile attempt to make men perfect. Law, once reserved for putting the lunatic and criminal into strait waistcoats, is now employed to put ordinary folk into leading strings. But if it does the one it obviously cannot do the other; if it prescribes the minimum of social morality upon which all men dwelling in community are agreed, it cannot possibly with any safety try to enforce a moral maximum, an ideal of conduct, a counsel of perfection upon which all men will never be agreed. Shall the use of nicotine be stopped by Act of Parliament and shall the carnivorous habit be restrained by law as the Emperor Asoka, the great Buddhist legislator, tried to do two centuries before Christ? Even Helvetius, who believed more implicitly than we can in legislation and the power of the State and the Schoolmaster, reserved this debatable territory for the influence of custom and popular religion. He calls upon law to assist morality—by the four sanctions, honour and disgrace, reward and penalty. In a world of selfish agents coercion is needed to induce right conduct. Yet the law must look to morality for instruction. Our countryman Hobbes thought it enough if an autocratic Government forced everyone to act socially. Helvetius more wisely wishes the decrees of law to find an echo in the subject's heart, to be upheld by public opinion and reason. But all sumptuary laws come under the category of unreason; like socialistic experiments their history is an unbroken record of failure. At various times the State has thought fit to poke and pry into domestic concerns or into matters that should be left open to private choice. Augustus, like Venice and even our own medieval parliaments, tried to limit the number of courses at supper; the mad Sultan Hakin in Egypt (about 1100) and Sultan Murad III in Constantinople set limits to individual freedom in the matters of drink, costume and other non-moral minutiae. Peter and Paul of Russia (about 1700 and 1800) set their police to cut down redundant coat tails and reduce the volume of beards so beloved of true Russians. A chance majority, as we know very well in these democratic days, can quite well imitate these historic tyrants and be none the less mischievous in degrading law, in teaching citizens to ridicule and evade it. It is therefore clear that social reformers should pause before they enlist the co-operation of law (which implies an outward coercion but no inward conviction or change of heart) to advance their Cause.

Bentham, a great master in Jurisprudence, if not in ethics, suggests a certain modesty in the claims and competence of law. The sphere of its action is narrower than that of morals. After all law can do nothing to prevent bad acts which bring their own penalty (like intemperance) or acts which public feeling and religious sanction have already condemned. The legislator should not waste his time in combating evils which he is in the end powerless to stop; he should leave their uprooting to custom and habit, to the national religion and its ministers, who, unarmed by any actual force, can therefore the more readily convince their hearers on matters of right and wrong. It seems clear to-day that the venerable position held by law can only be retained if it ceases to meddle in the legitimate domain of private freedom and to further extreme measures of social reform.

It behoves the defenders of law as a public blessing, as the art of right living binding on all citizens alike, not to minimize these dangers, to utter no platitudes about human progress and human brotherhood, but to endeavour to analyse, and if it may be to remedy, the admitted evils of our present state.

Mr. PEARCE moved a vote of thanks to the President for his address. He had spoken of the Rent Restriction Act, which had brought more grey hairs into the heads of solicitors than would otherwise have been the case. What would happen when the Law of Property Act came into force he trembled to realise.

Mr. T. H. GILL (Devonport) seconded the motion, which was carried with applause.

The PRESIDENT returned thanks.

#### NEXT YEAR'S MEETING.

The PRESIDENT stated that an invitation had been extended to the Society from Manchester to meet there next year and that the Council had very great pleasure in accepting it.

#### EASEMENTS AND THE LAW OF PROPERTY ACT.

Mr. H. F. BROWN, LL.B. (Chester) read a paper upon this subject, as follows:—

Seeing what great changes are to be made in the Law of Real Property by the Law of Property Act, 1922, it is a matter of surprise that they do not include any amendment of the law of easements. That, surely, is a branch of law deserving the careful attention of the reformer; it is rich in litigation; it has been severely criticised; and it is unsuitable to the conditions of the present day. It seems to be exactly one of those things which the Memorandum to the Real Property Bill states it is essential to overhaul, in order to effect any real simplification of the law; though, in the words of the Memorandum—"No doubt some experts have become so immersed in the fantastic practice at present in force, that, quite unconsciously, they have, notwithstanding its artificiality, come to regard it as normal and straightforward." There is no doubt, however, that the Law of Property Act does not materially affect the law of easements. In the very first section it is stated that an easement in or over land for an interest equivalent to an estate in fee simple absolute in possession, or to a term of years absolute, shall be one of the estates or interests in or over land capable of subsisting or of being conveyed or created by law. Section 23 provides that an easement shall enure for the benefit of the land to which it is intended to be annexed; and s. 31 provides that nothing in Part I of the Act (Assimilation and Amendment of the Law of Real and Personal Estate) shall affect the operation of any statutes already passed, or thereafter to be passed, with reference to the acquisition of easements or rights over or in respect to land. There are other references to easements throughout the Act, but they all tend to confirm the impression that, so far as is consistent with the general intention of the Act to assimilate the Law of Real and Personal Estate, the law relating to easements remains unaffected.

We are told, however, that before the Act comes into operation in January, 1925, it is to be repealed, with the object, I believe, of embodying its provisions in separate consolidating Acts; and I presume that amendments which an examination of the Act has suggested, will not be ruled out. My object, therefore, in this Paper, is to advocate an amendment of the law relating to the acquisition of easements by prescription or by the fiction of a lost grant, and, particularly so, in respect of the easements of light and of support.

The acquisition of easements by prescription is not a matter of native growth; it is an adaptation from the Roman Civil Law. How it became incorporated in our own Common Law is explained by Best, C.J., in *Giffard v. Lord Yarborough* (5 Bing. 162). He said that, in his opinion, the Laws of Edward the Confessor together with the Norman Customs which followed, could not have supplied a system of law sufficient for the state of society in the time of Henry III; and that both Courts of Justice and Law writers were obliged to adopt such of the Rules of the Digest as were not inconsistent with our principles of jurisprudence.

W. S. Holdsworth in his "History of English Law," says that Bracton, when speaking of easements, borrowed both the language and the principles of Roman Law; and through Bracton Roman Law has had a good deal of influence on our modern law of easements. Hunter's Roman Law (3rd ed., p. 419) states that while there can be no doubt that servitudes, or, as we say, easements, could be acquired by prescription, it is not so clear what the time was, but that, at any rate after Justinian, it may be assumed that the claimant was not bound to show that his exercise of the servitude began with a title, but he had an action in which it was only required to prove that he had, in fact, enjoyed the servitude for so many years neither by force, nor by stealth, nor by leave.

It was quite open to our judges to have adopted the principle that the claimant of an easement who could prove long enjoyment was merely not a trespasser; they might reasonably have

held that he had been granted a licence or permission which, though not sufficient to create a permanent right, would have excused the trespass as it would otherwise have been. If they had done so, I believe that they would have avoided an infinity of litigation, though in the days when judges were paid by fees that might not have appealed to them; that they would have done more justice as between man and man; and certainly that they would have avoided being driven from one untenable position to another.

However, the principle of the Roman Law that long adverse user of an easement conferred an absolute title to it, or as we should say, a freehold interest, was the principle selected. But it was one thing to adopt a principle of Roman Law, and another thing to fit it into our own system of Common Law; and our judges were faced with the preliminary difficulty that an easement, being an incorporeal hereditament, lay not in livery but in grant.

Prescription, therefore, under the English Common Law depended upon the possibility of presuming a grant as the origin of a positive easement, such as a wayleave, and a covenant as the origin of a negative easement, such as a right of light.

The presumption of a grant or covenant was arrived at as follows: If immemorial usage of a practice in the nature of an easement could be proved, a presumption of right to an easement of that character would arise; and as a right to an easement could only be conferred by grant or covenant, the presumption of right involved, in fact, a presumption that a grant of the right or a covenant in respect of it, had been made by the owner of the servient estate to or with the dominant owner or his predecessors in title, and, as the deed could not be produced, that it had accidentally been lost or destroyed.

Immemorial usage in the olden times meant usage of which no man could show the beginning; but subsequently the expression was taken to mean that the usage had not begun later than the first year of the reign of Richard I. In process of time, however, it became impossible to bring proofs of the existence of a usage at even this period, and the rule was adopted that usage might be presumed to have existed immemorially upon proof of its existence for a reasonable time, and the period of twenty years was, after the passing of the Statute of Limitations (21 Jac. I. c. 21), adopted as the time after which immemorial usage should be presumed, unless any person contesting the right could prove its non-existence at some time subsequently to the reign of Richard I. A very common method of defeating such a right was proof of unity of possession, and to meet this difficulty the judges in the eighteenth century introduced the fiction of the modern lost grant, but then again it was found difficult to require juries to find upon their oaths, that such a deed had been executed, which everyone knew had never existed. Then came the Prescription Act of 1832. Even that did not have the desired effect, for in the great case of *Angus v. Dallan*, 6 A.C. 740, there was extraordinary divergence of opinion how the easement then claimed was to be supported, and though I heard the judgments delivered in the House of Lords, and have often read the report of the case, neither then nor subsequently have I been able to understand on what known principle of law judgment was given in favour of the claimant. It was, I believe, another instance of judicial legislation with which the law of easements has made us familiar.

It will be observed from the preceding summary to what limits our judges have gone in supporting claims to easements; they seem to have taken them under their special protection, and, when the old law failed them, they invented new. They did not do this, however, without protest. For instance Lord Wensleydale said, "It is going very far to say that a man must be at the expense of putting up a screen to window lights to prevent a title being gained by twenty years enjoyment of light" (*Chasemore v. Richards*, 29 L.J., Exch. 83). Cockburn, C.J., in *Angus v. Dallan*, 3 Q.B.D. 85, criticised adversely both the shortening of the period of prescription without the authority of the legislature, and the fiction of a lost grant, and added that the easement of support appeared to him to be repugnant to reason and common sense, as well as to the first principles of justice and right. Again Lopes, L.J., said, "For convenience sake the fiction of a lost grant is very often pressed into service, but to presume a grant made by the Crown since 1852 and lost would be overtaxing the credulity of the most credulous, and would be making a demand too extravagant even for the elasticity of this patient and accommodating fiction" (*Wheaton v. Maple and Co.* 1893, 3 Ch., 48).

Nevertheless the fact remains that claims to easements were made possible for a period of 700 years by judicial decisions alone.

It might have been supposed that so much benevolent ingenuity could only have been exercised in favour of some exceedingly worthy object; but, on the contrary, the recipients of all these favours were trespassers, wrongdoers, men who filched from their neighbours.

A well-known writer on the Law of Easements says, "At first sight it may appear unreasonable and absurd that the law should

permit such important rights as easements, which operate so detrimentally against the servient estate to rest on no sounder basis than a grant which is implied or an act which is presumed, but, in practice, it has been found necessary for the quieting of titles and prevention of strife, as well as for the maintenance of valuable interests which would otherwise be lost, to stamp usages as rights which have been nothing but encroachments and a succession of trespasses." He then goes on to approve the fiction of the modern lost grant. The writer in question does appear to be eminently one of those experts referred to in the Memorandum to the Law of Property Bill, who have become so immersed in the fantastic practice at present in force that they unconsciously regard it as straightforward. In a lesser degree the same applies to all of us here, and thus our eyes have been blinded to the injustice of the present law.

When I began to collect material for this Paper I knew only that the Scots Law of Easements differed from our own, and I had noticed the case of *Gibbons v. Lefestey*, 1915, L.J.R., P.C. 158, in which Lord Dunedin stated that the law of Guernsey did not allow the constitution of ordinary servitudes or easements except by grant; but I had no idea how far the United States, and the British Dominions, had gone in the direction I advocate. According to Scots Law negative servitudes, such as rights to air and light and to support, are not to be acquired by prescription. A writer on the American Law of Easements (Washburn, 2nd Ed., p. 583) says that the Rules which prevail in the American States upon the subject of acquiring rights to light and air by mere length of enjoyment, will generally be found at variance with English Law. Many of the British Dominions have passed Acts specifically altering the English Law previously in force as regards the acquisition of an easement of light by prescription. Western Australia did this in the year 1901; New South Wales in 1904; Queensland in 1906; Victoria and British Columbia in 1907; and Tasmania in 1910.

The Queensland enactment, which is typical, is as follows:—No right to the access or use of light for any building shall be deemed to exist or be capable of coming into existence, by reason only of the enjoyment of such access for any period or any presumption of lost grant based on such enjoyment. Western Australia includes air as well as light. In those parts of the British Empire to which the Roman Dutch Law is applicable, namely, South Africa, Ceylon, and British Guiana, no prescriptive claim can be based upon an enjoyment which is not adverse to the person against whose land it is claimed. No one is bound to build on his land unless he pleases, and the fact that a landowner refrains from exercising this right of ownership over a long period of time does not in the least prejudice his right to exercise it when he chooses to do so (*R. W. Lee, Roman Dutch Law*, p. 153).

It will be seen that there is a strong stream of tendency setting in against the acquisition of rights of light by prescription, and it must be remembered that, prior to the Prescription Act, 1832, there existed in London, and, possibly in York and Birmingham and other great cities, customs opposed to the general law relating to the acquisition of easements of light. They were no doubt the outcome of experience and it is astonishing that they should have been abolished in favour of purely judge-made law.

The custom of London was that a man might rebuild on an ancient foundation to what height he pleased, though, thereby the ancient lights of the adjoining or opposite houses were obstructed, if there was no agreement in writing to the contrary (*Perry v. Eames*, 1891, 1 Ch. 658).

The law as to the acquisition of light has been adversely commented upon in recent years; for instance Fry, J., in *Angus v. Dalton*, 6 A.C., at p. 776, says:—"This rule as to light appears to have arisen without any full discussion in the Courts of the principle." . . . "Anyone," said Bramwell, L.J., in *Bryant v. Lefever*, 4 C.P.D., 172, "who reads the cases relating to the acquisition of a right to light will see that there has been great difficulty in establishing it on principle."

Moreover there is no reasonable method of interrupting the acquisition of a right to light. Had not custom dulled our sense of what is reasonable we should not, for one moment, admit the reasonableness of requiring the servient owner to erect a hoarding. The Law Society itself provides an example. Their property in Carey Street was bought between the years 1864 and 1872, and part of it was pulled down to widen Carey Street. It was not until the year 1904 that the remainder was finally incorporated in the Society's building. You may have noticed that the frontage to Carey Street of what is now the Common Room, is set back in its upper portion. This was not done voluntarily, but because the Bank on the opposite side of the road claimed a right of light. The building was begun just when *Colls v. Home and Colonial Stores*, 1904, A.C. 179, was before the Courts, and the extreme view as to rights of light had been approved by the Court of Appeal. It was not until after the completion of the building that the House of Lords laid down a more reasonable rule. To have protected the Society against the Bank's claim, it would have

been necessary to erect a hoarding probably to the full height of the present building. It may be assumed, in that case, that the claim was a genuine one, and that it was a material consideration that the light should not be diminished, but how often are ancient lights mere opportunities for extortion? The height of buildings should be regulated by law and not by easements.

Whatever may be said against the easements of light may be said against the right of support to buildings, an easement which was fully discussed in the case of *Angus v. Dalton*, 6 A.C. 740. Is it not an outrage that a man should be required to support his neighbour's building after twenty-years, when he has absolutely no means of preventing the acquisition of the easement, except by excavating on his own land for the purpose of causing his neighbour's building to fall? And what would be thought of a man who thus asserted his right? The position is even worse when a building derives support from an adjoining building.

In all cases of incipient negative easements, the servient owner should, at least, have a cause of action, as Lindley, L.J., at one time suggested (*Angus v. Dalton*, at p. 764).

There is less objection to the acquisition by prescription of positive easements, and it might be thought sufficient that we should bring our law into accord with the Scots Law, and limit acquisition by prescription to such easements, but, after all, prescription favours the trespasser and rewards the wrongdoer, and that is not a principle we are called upon to support. Custom has blinded us to the injustice, but the remedy is a simple one. It is to include in one of the new Real Property Acts a clause repealing the Prescription Act, 1832, and enacting that no easement shall be deemed to exist, or to be capable of coming into existence by reason only of the enjoyment of such easement for any period, or of any presumption of a lost grant based on such enjoyment, saving of course, existing rights. The dominant owner would then be in a position of a licensee, and if it were provided that reasonable notice should be given to terminate the license so as to enable him to take measures for his own protection, as for example by strengthening the foundations of his buildings, I cannot see that injustice would be done; nay, the burden would be placed on the right shoulders.

There is another right in the nature of an easement the acquisition of which is on an unsatisfactory footing; I refer to the acquisition of public rights of way by implied dedication. I am not going to deal with the subject in any detail, but I will cite just one case as an example of the unsound reasoning on which an intention to dedicate is based. A canal company had constructed a bridge for a special purpose and the public also used it. After some years, the use of the bridge having greatly increased, the company desired to close it to the public. It was decided, however, that they had dedicated it, the Court being of opinion that as the company must either have permitted the bridge to be used indiscriminately, or have put themselves to great expense in employing some person to see that those passing had a right to do so, there was a strong reason why they should have intended to dedicate the bridge to the public (*Grand Surrey Canal Co. v. Hall*, 9 L.J., C.P. 329). The Benchers of the Middle Temple, evidently, have this case in mind at the present time, in its application to Middle Temple Lane. The public is not really benefited by the law affecting dedication, for many landowners would be quite willing to allow the public to pass over their property, if a right to do so were not thereby acquired. Instead of the artificiality that finds an intention to dedicate when no intention exists, let notice of dedication be given to the Local Authority, and let that be the only evidence of dedication, saving, as I said before, all existing rights.

Sir WILLIAM BULL, M.P., P.C. (London, member of the Council) said that there had been an agitation recently in London with regard to the question of permitting buildings to be carried to a greater height than was permitted under the present regulations, for the reason, among others, that higher buildings were cheaper to erect. But one of the great charms of London was the fact that its buildings were so low. In the course of the investigations of those interested in the subject they came to the conclusion that the judgments of the courts on questions of easements of air and light had had a great deal to do with the matter. These decisions protected small properties, and the small houses at the back of some of the principal streets would never have been allowed to be built if such decisions had not led in the direction of these easements. But it could not be permitted that such huge buildings as those of New York should be erected in London, one of which contained during the working hours 15,000 persons, many of whom owned motor cars, and these caused great congestion in the surrounding streets at the hour for leaving off business. He regretted that it had been permitted to ruin the symmetry of Regent Street by the erection of lofty structures. He thought there was a good deal to be said on the other side to that advocated in the paper.

Sir C. H. MORTON (Liverpool, member of the Council) said that for many years he had advocated the views set out in the paper, which he felt perfectly certain would be to the general advantage of the common weal. The height of buildings and the width of

streets was a matter which should be left to the regulation of the local authority, in the interest of the public at large. The paper dealt with the stealing by an individual of an easement belonging to his neighbour. He quite agreed that the regulations as to the height of buildings and so on should be left to the municipalities, but, in his opinion, the law with regard to easements called for alteration.

Mr. BROWN, in reply, said that if one had to rely on the law of easements with regard to the height to which buildings were to be carried great inequalities would arise. It might apply in the case of one man and not in that of another, whereas the law should be equal to every one. The law of easements relating to the height of buildings was inadequate. It had been found necessary in London to prescribe that the height of buildings should not exceed 80 feet, but anybody who had been engaged in connection with the big building schemes in London knew that easements did not regulate the height of buildings. They did not affect them. If a man was willing to pay enough money he could raise his building to any height he liked apart from that prescribed by the Legislature, which was in London 80 feet. But if it were not for that proscription, it would only be a question of money. It was simply a question of paying for the right to obstruct ancient lights, and he asserted that in many cases that was simply an imposition. He hoped the Council would seriously take into consideration the facts suggested in his paper.

#### COUNSEL'S FEES.

Mr. PERCY BRABY (London) read the following paper:—

The subject of Counsel's fees is a much wider one than would appear at first glance and gives rise to a great number of questions.

The earliest records as to Counsel in the times of the Romans and also in the days of the ancient English Courts show that the position was regarded as such a high and honourable one that no payment could be accepted. The honour and glory arising from the work and the gratitude of the client were considered to be sufficient reward.

The original legal men in England were all priests.

When the study of the law became a separate profession the question of fees or remuneration was still considered to be one beneath the personal consideration of advocates, though payment was accepted in a clandestine manner.

Careful inspection of the gowns worn by present-day Barristers brings to notice a little bag or pocket fastened at the back with a long band or strap attached hanging to the front. This is generally supposed to be a relic of the purse which was at one time thrown over his shoulder by the learned Counsel to enable the client behind him to deposit therein, theoretically without his knowledge, the honorarium for acceptance or refusal. The advocate could then at a suitable moment pull the bag over his shoulder, examine the contents, and decide whether it justified his taking up the case. This method of conducting business must have given rise to difficulties and delays.

It is not stated how the Senior Counsel, who wear silk gowns of a different pattern, received their remuneration in these days. There is no trace of any pocket in their gowns, but possibly the sailor collar at the back of these silk gowns constituted a large bag in itself. Perhaps the little bags in the stuff gowns were found to be not big enough for the fees required by the Leaders.

Nowadays all difficulties in regard to fixing and payment of fees are disposed of by the intervention of Counsel's clerks, who immediately look at all briefs offered, see what fees are marked on them and promptly return them if the fee be insufficient.

There are a great many questions relating to Counsel's fees which might well form the basis of discussion. Some of these are as follows:—

(1) Should Counsel have the right to sue for their fees?

(2) Should the practice of payment by the client of Counsel's clerk's fees be continued?

(3) In cases where two or more Counsel are employed is it right that the fee of the Junior should be a fixed proportion of that of the Senior?

There are a number of subsidiary questions, but these three seem to be the most important.

(1) The first question can be dealt with very shortly.

It is, of course, common knowledge that Counsel have no right in any circumstances whatever to proceed in the Courts for recovery of their fees. The writer suggests that there is no call for any alteration in the present method. It is believed that Counsel are satisfied with the present state of affairs and that the instances are very rare indeed where their fees are not paid by the Solicitors instructing them. Counsel know perfectly well that matters can be made very unpleasant for any Solicitor who does not pay them by merely informing The Law Society of it, and this is considered quite sufficient protection.

If Counsel were given the right to enforce payment of their fees it is fairly certain that this would be conditional on their becoming liable for negligence in connexion with their work. Such a bargain might be regarded by some Counsel as a bad one, especially by those who are so busy that they fail to attend cases and yet retain the fee.

(2) Whether it is wise to continue the system of payment by the client of Counsel's clerk's fees can likewise be dealt with very shortly.

The system is an antiquated one and inconsistent with modern ideas. It is reminiscent of the days when tolls were paid for going over bridges, etc.

The clerks to many of our best known Barristers are receiving large incomes without exerting much intelligence, and on the other hand clerks to some of the less fortunate men earn so little in the form of fees that they have to be paid by their employers in the ordinary way.

There would seem to be no justification for forcing a client to pay a fee of perhaps £10 to the clerk of one of our eminent Barristers for performing slight services which any office boy can do.

The tendency of modern life is to simplify things and not unnecessarily to complicate them. Possibly Counsel's fees might have to be slightly raised to enable them to bear this burden, but it is believed this would not be necessary.

The busy Counsel make large incomes and could well afford to pay fair salaries to their clerks; while a large number of the less fortunate ones already are obliged to pay much of their clerk's remuneration. It seems, therefore, that nobody would really be hurt by the change.

It is contended, therefore, that there are strong grounds for the abolition of these fees, and insufficient ones for continuing them.

This, however, is not a matter of great urgency, and is therefore dismissed for the time being.

(3) The question as to whether the amount of the fees of a Junior Counsel should be a fixed proportion of those of the Senior is in the opinion of the writer a very urgent and important one.

After a long correspondence with The Law Society extending over some years, the practice on the subject was declared by the Bar Committee in its Statement of 1890-1 to be as follows:—

"By long settled practice the fees on the briefs of Leader and Junior respectively stand to one another in the proportion of three to two or five to three and that such a practice is reasonable and works satisfactorily."

"There is no rigid rule on the subject."

"A Junior is entitled to refuse a brief which is not marked in this proportion but he is not bound to do so, etc."

"It is the practice for Junior Counsel to refuse a brief in the absence of special circumstances affecting the particular case and he should be supported by his Leader in such action."

Now as the rules of the Bar preclude any other member of it from accepting a brief without the consent of the one who has settled the pleadings or advised on the case, it follows that the client is absolutely in the hands of the latter; and his clerk invariably refuses to accept less than the two-thirds.

The three-fifths arrangement seems no longer to be in force as it was laid down in *Re Park Boll v. Chester*, 1921, W.N. 259, that a Junior Counsel is entitled to be allowed two-thirds of the fee allowed to his Leader, and the Taxing Master has no authority to give him less.

This matter primarily affects four people, viz., (a) the Client, (b) the Junior Counsel, (c) the Senior Counsel, and (d) the Solicitor. The point of view of these four individuals will be considered in the order in which they appear to be most affected.

(a) There cannot be any doubt that the person who is best entitled to question the propriety of fixing Counsel's fees is the person who has to pay them, viz., the client. It is suggested on his behalf that the payment to the Junior Counsel of two-thirds of that of the Senior is often unfair.

In the cases where only a shall fee is paid to the leading Counsel there is no injustice, as two-thirds of that fee is generally honestly earned by the Junior. When, however, a very high fee is paid to the Senior Counsel, the fee payable to the Junior Counsel is nearly always higher than he would have received had he conducted the case alone.

The writer can remember numerous cases which the Junior Counsel would gladly have conducted alone for a fee of fifty guineas in which he actually received three or four times that figure for merely sitting behind his Senior and giving him slight assistance.

It may be asked why a system which is liable to produce such unfair results should have come into existence. The answer is very simple.

Firstly, in most instances, as already stated, it works out fairly and thus saves a vast amount of cudgelling of brains on the part of the Solicitors instructing and later by the Taxing Masters. Likewise it saves much discussion which would otherwise arise between Solicitors' and Counsel's clerks.

It is seriously urged that in the interests of the client this proportionate system of payment should no longer be regarded as inflexible. There seems no reason for interfering with the existing scheme in cases where the Senior's fee does not exceed, say, thirty guineas, but it is thought that in every instance where a higher fee is paid, the rule should not necessarily apply.

(b) Should the alteration above proposed be brought into being, a large number of Junior Counsel will undoubtedly suffer. If the reform be a right one, however, it should be carried out irrespective of losses which may occur to individuals.

The writer tried in vain to think of any strong argument which could be adduced on behalf of Junior Counsel in support of the present system, and then with great trepidation approached a well-known Junior on the subject. Knowing that the Bar maintains as rigidly as ever the tradition that the subject of fees must never be discussed outside its own ranks, the writer took the precaution to be near the door before broaching it. Fortunately no disaster occurred.

The only suggestion made by the learned Junior was that if the present rule were abandoned the Junior might sometimes have to be paid as much or even more than his Senior instead of the fixed two-thirds. Possibly this might rarely happen, but it carries no valid argument against the contentions above mentioned.

(c) The new proposal should accrue considerably to the advantage of Senior Counsel. It frequently happens that a comparatively poor client is most anxious to secure the services of a particular K.C.

As a concrete example, let us suppose that the desired K.C. cannot be secured for a fee of less than 300 guineas. The Junior Counsel (already in the case) would probably accept a fee of fifty guineas for conducting it alone. This figure added to that of the K.C. makes 350 guineas, which we will suppose just comes within the means of the client.

The Solicitor, however, has to inform the client that if the K.C. be employed the Junior's fee must be increased from fifty guineas to 200 guineas, and if a third Counsel be engaged he must be paid at the rate of two-thirds of the fee of the second Counsel. Not only that, but the daily refreshers of the Juniors will also have to be based on those of the expensive Senior, thus heavily increasing the fees again.

In such circumstances, it often happens that the client finds himself unable to pay the total fees required; the K.C. therefore loses the brief and the client is deprived of the special aid he required.

(d) The Solicitor employed in the case suffers heavily by the present system in more ways than one. The fees of Counsel under this system prove so heavy that the client sometimes finds difficulty in providing sufficient to pay the Solicitor, who (poor man) generally has to come in last.

Again if the Solicitor be so prevented by the present system from securing the leading Counsel who he believes is the only man to insure victory, he will suffer in prestige by losing the case.

Various classes of people are also affected. Lawyers as a body are concerned, because the bulk of the costs in all such cases assumes such a high figure that the public becomes alarmed and consequently litigation is decreased.

The public is also affected because many wrongs are now left undressed by the fear of excessive costs.

If this meeting is of opinion that this subject merits further consideration it is hoped that the Council of the Society will re-open it with the Bar Authorities.

Mr. EDWARD BELL (London) urged that more drastic means should be taken to require solicitors to pay the fees of counsel. In most cases solicitors did pay them, but he suggested that the Council should inquire into any complaint that was made to them in regard to the matter, and that the solicitor should be removed from membership of the Society. He thought the two-thirds fee should be allowed to the junior counsel, who did so great an amount of work in preparing the brief, drafting the interlocutory proceedings, interrogatories, and so on, for all of which he always received but an inadequate fee. The fees of leaders were governed by the rule of supply and demand. He urged that there should be a scale of fees to be paid to leaders, and if a client chose to pay a higher fee in order to secure a particular counsel he should be at liberty to do so, but that the losing litigant should not be required to pay more than the scale fee. The reader of the paper was inaccurate in his references to early Roman Law customs. Had he never heard of the *Lex cincia*, which fixed the maximum legal fee?

Mr. R. W. E. L. POOLE, B.A. (member of the Council) suggested the desirability of barristers' clerks being paid in the ordinary way, as was the case in other callings. To make their payment depend upon the earnings of their principals was to provide a temptation for them to try to get fees out of proportion to the work done. He agreed with Mr. Bell as to the value of the work done by the junior counsel, and thought that clients who were able to afford to brief expensive leaders should be able to pay proper fees to juniors. He believed, therefore, that the present system had a great deal to recommend it, and he should be sorry to see it changed without a good deal of consideration from the counsel's point of view.

Mr. C. SCRIVEN, LL.B., O.B.E. (Leeds, member of the Council) was also of opinion that adequate remuneration should be paid

to the deserving junior, and thought there should be the same power of discrimination between juniors that there was between leaders, and in that case he did not see why there should be an arbitrary scale.

Mr. H. P. EDWARDS (London) thought that a remedy was to be found for some of the present difficulties in the adoption in the King's Bench Division of the practice of the Chancery Division, by which a counsel confined himself to a particular court. The junior counsel should then get two-thirds of the scale fee, but should not be allowed any part of a special fee.

Mr. J. J. MCINTYRE (London) said it was well known that the present method of payment of barristers' clerks led to their comparing fees marked on briefs with the object of getting higher fees in certain cases.

Mr. S. S. SEAL (London) thought it would be well if solicitors conferred with counsel and pointed out that their clients were unable to pay the two-thirds fee to junior counsel.

Mr. C. G. MAY (London, member of the Council) said he saw no reason why counsel should not be able to sue for their fees, and then half the difficulty of the two-thirds question would be got rid of, and leader and junior would be paid according to their merits. This would involve responsibility for negligence, but he did not believe this would prevent them from giving advice with the freedom which had hitherto prevailed. There were cases where the junior deserved a higher fee than did the leader. There should be freedom of contract; a man should be paid according to his ability, and he should take the consequence of any advice he might give.

Mr. BRABY replied. He thought the suggestion that the matter should be adjusted by special fees worthy of consideration. He pointed out that it was the practice of the Council to remove from membership of the Society any member who was paid counsel's fees and did not pass them on to counsel.

The PRESIDENT said there was a great difference between such a case and that of a solicitor who had not been paid counsel's fees by his client and was yet expected to pay the fees to counsel. It would be asking too much that the Society should collect the fees in such cases.

#### RENT RESTRICTION ACT.

Mr. E. A. ALEXANDER (London) read a paper entitled "The New Rent Restriction Act," as follows:—

Three years ago, two years ago, even one year ago, a member of our Society could write a paper on the subject of rent restriction without fear that he might stray from the permitted path of policy into the forbidden field of politics. Times have changed and to-day it is necessary to walk warily, for the subject has definitely taken a front place in party controversy. Perhaps the surest way of showing one's impartiality is to cry with Mercurio "A plague o' both your houses," and to cast blame, not undeserved, on all parties alike.

The history of the new Act commences on 25th July, 1922, when a Committee, under the Chairmanship of Sir Henry Norman, was appointed by the late Coalition Government "To consider the operation of the Increase of Rent and Mortgage Interest (Restrictions) Act, and to advise what steps should be taken to continue or amend that Act." That Committee held its first meeting on 2nd August and its second meeting on 16th October: three days later it had reached "certain definite conclusions," the most important of which was that "Protection of tenants against eviction and unreasonable increases of rent" should not be withdrawn on expiry of the Act in June, 1923, and at the request of the Government it made an interim report to that effect. In view of the fact that the Government was then tottering to its fall, its anxiety for an early report was obviously caused by electioneering considerations; and it is not surprising that two members of the Committee refused to sign the report on the ground that there had not been sufficient time to afford a basis for a decision on such an important matter. One other member of the Committee, however, had found time to form the opinion that the Act should be allowed to lapse.

On the very day when that report was made Mr. Lloyd George's cabinet resigned, and four days later Mr. Bonar Law was appointed to succeed him.

On 3rd November, in the case of *Kerr v. Bryde*, the House of Lords, by the smallest possible majority, gave its decision that termination of a tenancy by notice to quit is a condition precedent to an increase of rent, and created a situation (particularly North of the Tweed where, in reliance on a Scottish decision at variance from the English decisions, it had not been usual to precede a notice of increase by a notice to quit) which it was generally agreed required legislative correction.

On 15th November came the general election which confirmed the new Prime Minister in office and a few days later the new Government was constituted. One of its first acts was to reappoint the Rent Restriction Committee, certain changes in its personnel being made, of which the most noticeable was the replacement of Sir Henry Norman by Lord Onslow as Chairman.

On 5th February, 1923, the Committee issued two reports. The outstanding features of the Report of the Majority (including the member who less than four months previously was of opinion that the Act should lapse immediately) were (1) That the Act should continue until Midsummer, 1925, in regard to houses first controlled by the 1915 Act, and until Midsummer, 1924, in regard to houses first controlled by the 1919 Act, but should cease to apply to houses first controlled by the 1920 Act; (2) That houses becoming vacant should be decontrolled forthwith; (3) That, except for a small addition where a tenant sublets, there should be no increase in the permitted rent; (4) That the restrictions on mortgages of houses within the Act should also continue, with an exception where inability to call in the mortgage delays the winding up of an estate. Four members who signed the Majority Report appended a reservation in which they dissented from the recommendation as to mortgages and recommended that all restrictions in regard to mortgages should lapse. Other members signed subject to reservations on other points: one thought that decontrol should take place for all classes of houses one year later than was proposed by the Majority Report, another favoured local option in fixing the dates, two others thought that the 25 per cent. now allowed for repairs is too high, another recommended an addition of  $\frac{1}{2}$  per cent. to the permitted rate of mortgage interest.

The Minority Report was unanimous on all points. There were no reservations. It is perhaps necessary to explain that the minority consisted of two. The districts of their origin are indicated by their names—Duncan MacGregor Graham and David Watts Morgan. Their political opinions are indicated by the nature of their recommendations. The substance of their Report was that on the whole the 1920 Act was a very good Act, that it should continue until 1930, and that it needed no amendments except (1) To secure compulsory lettings; (2) To restrict sales; and (3) To restore the standard rent as the maximum permissible rent and to wipe out the authorised increases. It was no doubt good political tactics to include labour members from the mining districts of Scotland and South Wales on a Committee dealing with a question which is very largely a working-class one; but it does seem a farce to choose for any Committee people who by their declared political opinions are committed in advance to definite recommendations irrespective of the evidence which they may hear, when there are available plenty of other people of judicial and unbiased minds and not less ability.

The new Government was in no hurry to declare its decision on the Reports. It was no doubt aware that the majority recommendations would be unpopular, and it was still looking for seats for Ministers who had been unfortunate at the general election, including one Minister who not merely was of cabinet rank but also held the office which would place him in charge of the Rent Restriction Bill when it should be introduced. His equivocal statements of the Government's intentions, his defeat at the Mitcham by-election, the defeats within a week afterwards of two minor Ministers, the fact that it was mainly on the question of rent restriction that the three by-elections were fought, the Government's hurried declaration that the recommendations of the Majority would not be accepted and that control for all classes of houses would continue till 1925, are too well remembered to need more than bare mention here.

Then came a long pause. The Committee's Reports were issued early in February and the Government's policy was in its main outlines framed early in March, but it was not till nearly three months later, viz., on 30th May, that the Bill was introduced into the Commons. The interval, however, had not been wholly wasted. On 11th April a Housing Bill was introduced: rosy expectations that the housing shortage would be overcome within a few years were held out, and no doubt helped to prepare the way for a Bill intended to control rents for only a limited period. And another Bill was brought in to alter the position due to the decision in *Kerr v. Bryde* by providing for a notice of increase operating in future also as a notice to quit, and regulating the rights of owners and tenants where notices of increase had been served in the past without being preceded by notices to quit.

During this interval we were given another example of the fact that one legislative error may necessitate many corrections. We had already seen how the old Rent Restriction Acts had necessitated a Government housing programme; how, when that programme was abandoned, the new Act necessitated another programme: that was a case of legislation increasing national expenditure. Now we saw how the Acts reduced national income. Notices of the new assessments of extra-Metropolitan houses were served, and owners observed with amazement that the whole of the 25 per cent. allowed for increased cost of repairs was treated as extra income and four-fifths or five-sixths thereof was to be assessed for income tax: what was expenditure for the purposes of one Act was income for the purposes of another Act. This Gilbertian situation was only partially altered by a subsequent compromise whereby the statutory allowances for repairs were increased to a slightly larger proportion of the annual values.

But whatever may, or might, have occurred in this interval, it is impossible not to deprecate the delay, firstly because of

the uncertainty as to their legal position in which a large majority of householders were left until the very last minute, and secondly because sufficient Parliamentary time was not available to enable the Bill to be properly discussed. No Act altering the right to possession should come into operation until several months after it is passed, for every occupier ought to have adequate time to find new accommodation before being compelled to give up the old. So short indeed was the time for discussion that it was necessary to pass another minor Act continuing without alteration the operation of the 1920 Act from its expiry on 24th June until 31st July.

The impression which probably most of us derived from a first glance at the Bill was one of pained astonishment. Professional opinion, reiterated almost *ad nauseam*, had been wholly disregarded; apparently the draftsman of the 1920 Act had not been superannuated and had actually been allowed to draft another Act. We were committed for a further period to the abominable style of legislation whereby an additional right is conferred on one party to a contract not in direct terms but by the ridiculously roundabout method of depriving the other party of his remedy for breach of that contract. For a further period we must apply the word "rent" to the payments made by a statutory tenant, which lack one essential of real rent in that they are not made in pursuance of a contract. Nineteen new sections (ultimately increased to 20) were necessary to prolong and amend a principal Act which itself contains only 19 sections.

Even if rent restriction is to continue for only two more years it was surely worth while to frame the new Act on new lines. It would have been simple to commence by providing that every tenancy (whether contractual or statutory) of a house to which the Act applied existing at the date of passing of the Act should continue so long as the Act applied to the house, and then to set out the incidents of the tenure during the extended period such as the rent payable, the circumstances in which and method by which the owner might determine the tenancy, the method by which the tenant might determine, and other modifications in the contractual, common law or statutory rights of the parties. An Act drawn in this way would have abolished the present statutory tenancy with its peculiarities, known and unknown, and would have left us to apply to the new period the well settled and sensible general law of landlord and tenant.

So much for the form of the Bill. In its substance it justified a forecast made at our last provincial meeting—and received with loud dissent—that rent control would last five, six, seven or even more years longer. While in other respects it adopted the Majority Report, it accepted the Minority Report in its most important respect by continuing control until 1930, in its old form (with certain amendments) for two years and thereafter in a modified form.

The Bill was the most contentious and, with the allied subject of housing, the most important item in the past session's legislative programme. It is hardly too much to say that it was the most important item in the whole range of domestic politics, for although larger subjects, such as the capital levy, have been discussed, they are still outside the region of practical politics and at present possess an academic interest only.

The alterations made in the Bill during its passage through the Commons included entire deletion of two provisions inserted in accordance with the Majority Report. These provisions were (1) To alter the law as laid down by the House of Lords' decision in *Nicholson v. Jackson* and to restore to the owner the benefit of the rate compounding allowance, and (2) To authorise immediate realisation of a mortgage security where necessary for due administration of the estate of a deceased person or the execution of a trust. Another provision recommended by the Majority Report, for decontrol of licensed premises, was deleted and was replaced by a much milder clause to which I shall refer later. The alterations comprised also various new provisions, including one to restrict the rent which a tenant may charge to a new sub-tenant: the draftsman of the Bill apparently thought it unnecessary to distinguish between decontrol in favour of the owner when a tenant vacates and decontrol in favour of the tenant when a sub-tenant vacates.

But though the Government was as accommodating as a Government well could be, the Leader of His Majesty's Opposition was not satisfied; and both on the second reading and on the third reading his followers voted solidly for the rejection of the Bill. It was a mere gesture, for if he had not been assured that the other opposition parties would vote just as solidly in favour of the Bill his followers would certainly not have voted against it; general decontrol is the last thing that their constituents desire.

It was not until 24th July that the House of Lords had an opportunity of considering the Bill, and it had to be passed into law within a week; naturally a protest was made against this disregard of its legislative rights. Considering the inadequacy of the time allowed, the amendments made by the Lords were considerable, and our second chamber once more justified its

existence. To the Lords we owe the whole of ss. 3, 8 and 14 of the new Act; a new section 5 of the 1920 Act instead of the old s. 5 with innumerable amendments; and the present form of s. 6 of the new Act.

On 31st July the Royal Assent was given, and the old law now stands altered in the following and one or two minor respects.

1. Sitting tenants only and not new tenants are now protected except—

(a) New sub-tenants.

(b) New tenants of houses from which the late tenant was evicted for non-payment of rent.

(c) New tenants of premises from which the late tenant was evicted under an order obtained by misrepresentation or concealment of material facts and in regard to which the Court makes an order that the premises shall remain controlled.

2. Contracting out may be effected by a new lease for a term of not less than two years expiring on or after 24th June 1926.

3. A tenant who had taken a lease at a rent exceeding the permitted rent after 24th June 1923, but not exceeding the permitted rent before that date, may be put to election either to remain as tenant under the lease or as statutory tenant; if he takes the former course he must pay the full rent reserved, if the latter he must give up possession when decontrol takes place although the term of the lease may not have expired.

4. A new and more precise and reasonable definition of alternative accommodation is given.

5. Subject to provision of alternative accommodation, possession can be obtained (a) for a prospective employee of the owner, (b) where the premises are required for any purpose in the public interest.

6. Possession can be obtained without providing alternative accommodation where—

(a) The owner became the owner before 30th June, 1922, and requires the premises for occupation for himself or his adult children.

(b) The tenant assigns or sublets the whole of the premises comprised in the tenancy.

(c) The premises are licensed and the tenant forfeits or jeopardises the licence.

(d) The landlord requires the premises for his own or his children's occupation and greater hardship would be caused by refusing than by making an Order.

7. Disrepair is in all cases to furnish a good defence to an action to recover any increase of rent and not merely the 25 per cent. allowed for extra cost of repairs.

8. A notice to increase rent may be amended by the Court if satisfied that it contains an error due to a *bonâ fide* mistake.

9. A small addition may be made to the rent of premises sub-let without notice in the statutory form being given, and the tenant must supply the owner with particulars of the sub-letting.

10. A six months period of limitation for recovery of over-payments, or of arrears recoverable only by reason of amendment in a notice of increase, is imposed.

11. Provision is made against excessive charges for furniture sold as a condition of grant or assignment of a tenancy.

12. The law as laid down in *Nye v. Davis* and in *Wilkes v. Goodwin* is modified, so that the value of furniture or attendance included in a letting must be substantial if the letting is to be outside the Act.

13. Power is given to the County Court to determine summarily questions as to the amount of rent, standard rent or net rent.

It is self-evident that the new law is better than the old—for the simple reason that nothing could be worse. But the opportunities which the Government missed are as numerous as those which it seized. Two valuable recommendations of the Majority Report were altogether disregarded. One was to simplify the form of notice to increase rent: the other was to empower the County Court to fix a substituted standard rent of premises not let on 4th August, 1914, by reference to the rental value on that date. And of the recommendations which were adopted in the Bill several, as I have already pointed out, were afterwards abandoned.

Undoubtedly the continued control of mortgages is the greatest blot on the Act. The reservation as to mortgages appended to the Majority Report is a most convincing document. It points out (1) That capital available for loan on mortgage at reasonable rates of interest is now abundant; (2) That even if decontrol should result in owners having to pay a higher rate of interest, the decreased and decreasing cost of repairs would afford adequate compensation; (3) That continuance of control would decrease confidence and further divert capital from house building. That reservation was signed by some of the most influential members of the committee, including the chairman and the solitary solicitor who sat on it. One would have thought that the Government would have preferred the judgment of these

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four to the judgment of the other members: it preferred to accept the more timid recommendation that enforcement should be allowed only where continuance of the loan would delay the winding up of an estate, and finally abandoned even that. In the abandonment we can see the hand of the property owners' associations, who have made it their policy that mortgages should remain controlled as long as the houses constituting the security. A most short sighted policy it is, for the tendency of continued control must be to decrease the amount of money available for mortgage investment and to increase the rate of interest.

A little compensation might have been offered to mortgagees in the shape of an addition of half or one per cent. to the permitted rate of interest. The decreased and decreasing cost of repairs is recognised in the Majority Report as well as in the Reservation. Owners could pay the extra interest and still receive the same net income from their houses as they received in 1920. But the law as to mortgages remains exactly as it was.

Another serious blot is the absence of a judicial standard rent for houses not actually let in August, 1914. In the case of houses which were then occupied by owners it is necessary time after time to go back twenty or thirty years or even longer in the search for the amount of the standard rent, which is often not discoverable at all and if it is discovered is never a reliable indication of the 1914 value. The occupying owner may, during his occupation before the war, have improved the house almost out of recognition; but unless the improvements were so extensive as to amount to a reconstruction he is not allowed to charge a penny more rent than if the improvements had never been made. If it were not for the comparative infrequency of a substituted standard rent being required I should regard this as an even greater blemish than continuance of control of mortgages.

Other anomalies that still persist are:—

1. Possession is still ten points of the law. The scandal illustrated by the decision in *Price v. Pritchard* still remains, and an owner is still unable to eject a bachelor of no occupation to make way for a family man who has obtained work in the neighbourhood. He may not do so even if he can offer adequate alternative accommodation.

2. Business premises are still protected if comprised in the same letting with a dwelling-house. In the familiar case of a shop with dwelling-rooms over the tenant may retain the whole at the permitted rent. One would have thought that, at any rate in the case where there are separate entrances, the protection might be limited to the upper part at an apportioned rent. But the tenant retains his old unfair position of having a trading advantage over his neighbour who has a shop only and must pay an economic rent.

3. No general and exclusive jurisdiction in actions for possession has been conferred on the County Courts: the additional jurisdiction conferred by the Acts is still limited to actions arising out of the Acts, and the High Court still has concurrent jurisdiction in possession. Indeed, there are plenty of houses within the Acts, and therefore within the County Court jurisdiction for all purposes except possession, and outside the jurisdiction for that one purpose, because their annual value exceeds £100.

4. A tenant of a furnished house, in view of the peculiar wording of s. 9 of the 1920 Act, must apparently still sue before his tenancy expires to recover excess rent which he has paid, though a tenant of an unfurnished house may bring his action within six months after the termination of the tenancy.

5. A tenant who gives notice to quit is still entitled either to approbate or to reprobate his notice, and no owner ever knows

whether his house will be vacated in pursuance of a tenant's notice until the tenant has actually left.

6. Alternative accommodation must still be kept available till the date of trial of an action for possession, and availability at the date of commencement of the action is still insufficient to secure judgment.

7. No provision is made to compel an owner to put a dilapidated house in repair or to compel a sanitary authority to give a certificate of disrepair.

8. The owner of a leasehold house, while restricted in his dealings with his tenant, enjoys no corresponding relief from strict observance of his own covenants. He gets little advantage from the increase which has occurred in the value of his property but suffers the whole burden of the increased cost of repairs enforced by his lessor, and is not excused merely because they are not necessary to preserve the house for the lessor or keep it habitable for the tenant. To him in fact the superior landlord is the upper millstone and the statutory tenant is the nether millstone, and between the two he is ground.

9. The right of a statutory tenant to deal with his tenancy, which was established on 13th July by the decision of the Divisional Court in the actions of *Keeves v. Dean and Nunn v. Pellegrini*, remains in important respects unimpaired. Unlicensed assignment, it is true, entitles the owner to an order for physical possession, but sub-letting of the whole of the dwelling-house (if not forbidden by the contract which preceded the statutory tenancy) apparently does not; it enables him to determine the estate of the head tenant, but does not entitle him to eject the sub-tenant. The law is not clear, but if this view is correct, the right thus conferred on sub-tenants enables tenants to traffic in their tenancies in a way which goes far beyond what is required for their reasonable protection, and to rob their landlords of that part of the landlord's property which is represented by the difference between the values of an occupied house and of a vacant one.

Of the speculations as to the future which my subject evokes the most immediate are those concerned with the manner in which the new Act will be administered. Like the Act of 1920 it confers an immense number of discretions on the Judges. Time after time we find expressions such as "in the opinion of the Court" and "the Court may if it thinks fit." The words "reasonable" and "reasonably" occur no fewer than fifteen times. The intention of the Legislature appears to have been that every Judge shall do that which is right in his own eyes: the Courts are deputed to administer justice rather than law. Such idealistic provisions must have the result that in many respects the rights of the parties will be impossible of ascertainment without judicial decision, and the rights of residents in one County Court district will vary very considerably from those of residents in an adjoining district. One of the most interesting of these speculations is as to the effect which the Judges will give to the provisions of the new s. 5 (1) (e) of the 1920 Act, which enables judgments for possession to be given where the dwelling-house is reasonably required for any purpose which in the opinion of the Court is in the public interest. It is to be hoped that this clause will be construed so as to enable an order to be made for possession of land which is required for building development: it is submitted that this might be done by means of a judgment for possession of the dwelling-house and the land let therewith and restitution to the tenant, at a reduced rent, of the dwelling-house without the land to satisfy the requirement of alternative accommodation. It might even be extended to cover the facts of cases such as *Price v. Pritchard* and to allow an owner an occasional choice of who shall be his tenant.

So much for the law as it now stands. I have not hitherto referred to Part II of the new Act, which is not to come into force until Midsummer 1925. The time at my disposal will not allow me to deal at any length with this part of the Act, nor is it necessary to do so at this early date, but its effect is largely to extend the discretions already vested in the Court. Judgments for possession are not to be given if proceedings are taken "harshly" or "oppressively" or so as to cause "exceptional hardship" to the sitting tenant: the Court is to fix the rent; and enforcement of mortgages is not to be allowed where it would cause "exceptional hardship" to the Mortgagor.

Part II also provides for the establishment of reference committees to whom the Court may refer for consideration and report (but not for determination) questions in regard to the rent, character or condition of dwelling-houses; authority is also given to the reference committees to determine questions in relation to rent, but this power is limited to cases referred to them by consent.

This part of the Act is to continue until Midsummer, 1930; but the section which provides for its duration contains also a somewhat peculiar proviso authorising His Majesty in Council to repeal Part II before the date specified if a resolution to that effect is passed by both Houses of Parliament.

In any case I should not feel inclined to deal at length with Part II because, in my opinion, it is very doubtful whether it will ever come into operation. There is no indication at present that in less than two years there will be any change in the circumstances which, in the opinion of the Committee and of the Government, rendered it necessary that control should be continued. On the contrary, the indications are rather the other way. The cost of building remains at nearly twice the pre-war level; there has been little change during the last year in the price of building materials; and the probability is that the revival of state-aided schemes under the new Housing Act will increase the prices, though probably not to the same extent as we experienced three years ago. Wages also remain at a level closely approximating to the rate which ruled a year ago; an attempt by the master builders during the spring substantially to reduce wages and increase working hours signally failed, for the masters obtained only about 25 per cent. of what they asked for, and the result of the arbitration was rightly claimed by the operatives as a victory. Here again the revival of state assistance is likely to increase rather than to decrease costs. The only element of cost in the provision of new houses which is comparable with pre-war costs is the price of land, and that forms a very small proportion of the total cost of providing a house.

It is impossible to predict what influence state aid will have on the number of houses to be provided. But there is a limit to the capacity of the country to provide houses definitely fixed by the number of operatives in the building industry—a number which stands at something like two-thirds of the number engaged in the industry before the war, and shows no signs of any substantial increase. The inability of the trade to provide the labour and materials required for a really extensive house building programme is sufficiently recognised to have induced a decision by the Unemployment Grants Committee not to make grants in aid of works that would entail use of any considerable amount of building labour and materials. The deterrent effect on the building industry of the Rent Restriction Acts is too well appreciated to need more than passing mention. There is another influence, which perhaps, is not sufficiently recognised. Building costs have fallen in the past two or three years and they are likely to fall in the future, if not in the immediate future. Nobody will buy on a falling market unless he has more money than sense or unless he is in urgent need of the commodity which he considers securing. And without an immediate purchaser no one will produce on a falling market, otherwise his production will be wholly unprofitable.

Taking all these factors together, it cannot be doubted that the new houses to be provided during the next two years will not do more than keep pace with the increase of population, and very likely will fall short even of that. The shortage of houses will be as acute as it is to-day, and if continuance of full control is justified in 1923 it will almost equally be justified in 1925. The Government of that day will have to decide whether it will adopt the nebulous provisions of Part II of the new Act or whether it will adopt a new policy.

It has frequently been said, and it is generally believed, that there must be a transitional period between the period of full control and the period of absolute decontrol. But there is another method by which provision might be made for this intermediate period, and that is by continuing the control already established but authorising periodical increases of rent throughout the period. One can understand that the depressed state of trade and the consequent national poverty afforded a reason why rents should not at present be increased; and the lower cost of repairs has to some extent compensated owners for having still to abide by the limited increases allowed in 1920. If, however, in 1925 trade has substantially improved, there seems no reason why a further increase at the rate of 10 per cent. per annum should not be allowed until the permitted rents have reached an economic level. Then the provision of new houses would be profitable, and we might hope for an end of the conditions which produced the Acts now in force.

It is not certain, however, that a period of partial control cannot be avoided. House famine and rent control have not been confined to this country alone. They have appeared in most other European countries. One at least of these other countries restored freedom of contract to landlord and tenant at almost the same time that we should have begun to enjoy that freedom had there been no new Rent Restriction Act. In Italy control ended on 1st July last, and the new state of affairs has not been accompanied by wholesale evictions, by unreasonable increases of rent, or by indignation on the part of tenants. The increases in rent allowed under the Italian Rent Restriction Acts amounted to approximately 70 per cent. and an addition of about 30 per cent. (bringing rents up to about double the pre-war level) has been regarded as fair by both landlords and tenants.

Social, political and economic conditions in Italy are so different from those in this country that Italian experience is not a reliable guide to what might happen here. The difference is particularly marked in the currency; the depreciation in our

own currency (which still retains 60 per cent. of its pre-war purchasing power) has been only about one half of the depreciation in the Italian currency, so that the rent increases which have occurred there are not strictly comparable with like increases here.

But abroad as well as at home trade is bad, and the tendency of wages is downwards. Abroad as well as at home attempts have been made to persuade the lower paid workers that rent is robbery and owners are robbers. I for one, and many others with me, will not believe that the English tenant is inferior to the foreigner in sanity and common sense, in love of justice and fair play, or that the English house owner is more greedy or unreasonable. It is our misfortune to live in a democracy, a democracy which is wholly uncontrolled and only partially educated: in consequence we get the laws which the majority of us wish for, not the laws which are good for us. We need an educational campaign to make the public understand the essential wisdom of paying an economic rent and thereby encouraging the provision of additional houses, the essential fairness of a rent having not the same nominal but the same purchasing power as a pre-war rent. And we need a Government composed of men who will lead and not follow the electors, men who will approach this question with a determination to do the thing which is right even though it were to their own hindrance, not with fear of losing votes but with faith and courage.

Mr. W. H. NORTON said there was an urgent necessity for removing the restrictions in the case of mortgages, which concerned solicitors much more than the rent restrictions. Such restrictions were particularly mischievous in regard to the administration of small estates as the mortgages could not be called in. He hoped the Society would use every endeavour to get de-control in this respect.

Mr. CLAY (Sheffield) referred to instances where it had been necessary to borrow money at a higher rate of interest than that provided for in the mortgages.

Dr. BURGIN (London) suggested that the Council should advise solicitors to make representations to the Lord Chancellor with regard to the conflicting decisions as to the interpretation of such expressions as "reasonable" and "as the judge may think fit," and the Lord Chancellor might think proper to issue a memorandum on the administration of the Act. He urged solicitors to be very careful not to allow themselves to write letters with the object of obtaining possession threatening immediate action when such action was not actually intended.

Mr. BRABY also urged that such letters should not be sent.

Mr. GOODMAN (Devonport) thought that a return of the orders made by county court judges with regard to alternative accommodation would show that no great difficulty existed in the tenants getting such accommodation.

Mr. F. G. JACKSON (Leeds) suggested that the power of de-control should be left with the local authorities.

Mr. ALEXANDER, in replying, objected entirely to an official explanation of the Act, such as Dr. Burgin had suggested being issued. He believed that the county court judges had held meetings and discussed the Act and had come to conclusions upon which many of them acted, so that there was a prospect of something like uniformity in its administration. He agreed that solicitors should not write the letters which had been referred to. Solicitors ought to be the last persons to evade or disregard the law.

#### THE JUDGES AND THE EXECUTIVE.

Sir KINGSLEY WOOD read the following paper:—

One of the Law Officers of the Crown recently in Parliament gave the opinion that the Executive to-day received no particular leniency from the Judges. In another and different quarter it is the fashion to decry many of our constitutional safeguards and particularly to express impatience at the checks which we had, at any rate in pre-war days, imposed on the Administration of the day and its officials. Happily, it can be asserted with some confidence that the great majority of the nation values our ancient British Constitution, its delicate but definite balance between the powers of the Executive and the rights of the citizen, and particularly those great principles which secure the liberty and freedom of the subject as no other constitution in the world has done. It was, indeed, only on account of stern war necessity that we perforce acquiesced in their relaxation or modification. It is true to-day there is now no such danger as there was in 1679 of any single Minister usurping the functions of the Courts or its Judges or Magistrates, but none the less there are indications that the Executive may desire to maintain and on occasion still to seek abnormal and extra-constitutional powers and that the war mind still lingers amongst some of our officials and administrators. We should, it is submitted, view with proper jealousy any such attempts and promptly condemn any pretext that may be put forward to justify them.

#### GOVERNMENT DEPARTMENTS AND THE COURTS.

Obstinacy in relation to, and even contempt of, the jurisdiction of the Courts over Government Departments and their administrative actions have unfortunately been not uncommon of late.

A recent case of the Post Office having its origin in a County Court involving a paltry £40, and its end in its summary dismissal by the House of Lords, is an illustration of this kind of expensive contumacy. All five Law Lords who finally heard the case did not hesitate to express their regret that the Postmaster-General had not accepted the decision of a lower court in a simple matter in which he had obviously committed a wrong. There was the case of a month or two ago, where the Commissioners of Inland Revenue in a dispute about the basis of a return for excess profit duty, contended there was no appeal from their decision, and that they were to be Judges in their own cause. There were "two hearings before the Special Commissioners, one hearing before the Commissioner of Inland Revenue, three cases before the Court of King's Bench, two cases before the Court of Appeal and a case before the House of Lords" before the Respondents could establish their rights against these Commissioners. Law Officers of the Crown, junior counsel for the Crown and Treasury solicitors were all engaged, and the taxpayer has of course to bear this costly extravagance. In these two instances the parties who had to bear this litigation were wealthy and could therefore make resistance, but it may well be apprehended if an ordinary citizen had been concerned in such suits, he would have been overwhelmed and justice denied him by the action of these Departments with all the forces and money of the State behind them. Again, there was the remarkable case this year where the Board of Trade actually resisted proceedings because the writ in the action had not been issued and served on the Archbishop of Canterbury and other nominal members of the Board of that Department. These are but some of the cases within the last twelve months that have been brought to light by public proceedings in the Courts; it is perhaps not an unfair assumption to make, that there must be many more which do not reach this open stage, and where many a harassed citizen has to forthwith succumb to unfair and bureaucratic methods prompted by a revolt, minor but none the less unmistakable, of Departments against the Courts.

#### ORDERS IN COUNCIL.

In connection with this subject it may be material to briefly note the necessity of carefully watching and of fully ascertaining that there is an overwhelming case made for all proposals from the Executive which involve in an Act of Parliament power for

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Orders to be made in Council which as a consequence have the same full force and effect as an Act of Parliament itself. The same observation is almost equally applicable to those Acts which permit Regulations to be issued by Ministers having the same force as law unless resolutions to the contrary are passed by Parliament within a specified time. In the case of Orders in Council there is no effective possibility of Parliamentary supervision over the Executive, and in the latter case the position is little, if any, different in this respect from a practical point of view. In a case before the Court of Appeal this year, two Orders in Council were issued during the progress of the actual argument before the Lord Justices, and were cited by the Crown in support of their case. The Executive retains many Orders in Council and the regulations made under them, which should have long ago been abolished. It is to-day, for instance, an offence for which one can be tried by court martial, if finding in England a homing pigeon incapable of flight one should fail to hand it over to a military post or police constable with precise information as to where the pigeon was exactly found. We are evidently still at Dora's mercy.

#### THE LIBERTY OF THE SUBJECT.

There has once again been a remarkable example in relation to the liberty of the subject and the respective powers and duties of the Executive and the Judges in the recent Irish Deportation proceedings, which has furnished a striking testimony to the impartiality of British Justice. *Habeas corpus*, fashioned in days when modern problems had not been even foreseen, but then enacted "for the better securing the liberty of the subject and for the prevention of imprisonment beyond the seas" was again successfully invoked. It was so invoked in favour of British subjects with whom there could be no possible vestige of personal sympathy, but rather of severe condemnation and against an Executive who acted entirely in good faith. But the Judges paid as little attention to the motives as to the convenience of the Administration: they were concerned solely with the historic duty entrusted to them by our Constitution and without fear or favour performed their task. It proved that the Executive, like the meanest subject, can be made amenable to the firm law and still virile spirit of the Constitution. The lesson will be all the more valuable if it brings us back to the well-founded and previously dearly prized British principle of refusing to allow any person to be imprisoned or his personal liberty or rights affected without a public statement of the case against him and of the evidence upon which it is based.

#### FURTHER POWERS SOUGHT FOR THE PUBLIC PROSECUTOR.

There is reason for the contention, however, that we have yet to be watchful even in this connexion. There is a proposal now before Parliament that would permit the Director of Public Prosecutions, without notice and without making any charge, public or private, to obtain an order for the inspection of a citizen's banking account and all its entries on the ground of suspicion alone, and not only that, but to "stop" the account of the suspected individual altogether. This, as the Solicitor-General stated, is a drastic power. It is more—it forcibly violates the undertaking which bankers always give to keep their customers' accounts secret, in order that the Director of Public Prosecutions may see if he can find evidence on which to institute a prosecution, and for the sake of perhaps a few fraudulent cases hitherto undetected, it introduces a new, and it is submitted, wholly undesirable principle in British law. In the same Bill further special powers are sought with regard to cases otherwise capable of being dealt with summarily but where the Crown is conducting the prosecution. It is proposed that in such cases Magistrates cannot so deal with them without the consent of the Director of Public Prosecutions—thus, in this respect, placing the Director above the Court itself. There is another remarkable suggestion in the same Bill. A prisoner who has successfully appealed to the Court of Criminal Appeal is, of course, at once at liberty whether the Crown is appealing to the House of Lords or not. It is now proposed that, at the instance of the Prosecution and when an appeal to the House of Lords is to be lodged, the prisoner may be detained notwithstanding the fact that he has won his case.

#### TRIAL BY JURY.

In any consideration of this subject, the present position of trial by jury in this country is important. Trial by jury is not only "essentially a principle of our law and has been the bulwark of liberty, the shield of the poor from the oppression of the rich and powerful," but has exercised on many and momentous occasions in English history an effective check both on the Executive and on the Judges themselves. Our liberties have indeed been in no small degree established and preserved by twelve men in a jury box. It is now more than 100 years ago when one Nathaniel Hone, a bookseller in London, was tried on three successive days in the City of London on a criminal charge

of blasphemous and seditious libel. Mr. Justice Abbott tried the case first, but on the third day of the trial the Government were so anxious to secure a conviction that they sent Lord Ellenborough down to the City. The jury exercised their undoubted right by acquitting the defendant. Many will think with Lord Justice Atkin, that at the present time the danger of attack by powerful private organisations or by encroachments of the Executive is not diminishing and that it is still eminently desirable to maintain our ancient jury system and not in any way diminish it. Yet we are told by Lord Justice Bankes that what was once an undoubted right has been gradually eaten into until at last, if a then recent Provisional Rule was made permanent, the right of trial by jury has been entirely taken away! The Provisional Rule referred to was made under the Administration of Justice Act, 1920, a statute by which in the judgment of the Court of Appeal "for the first time in history the British subject is permanently deprived of his right to have common law actions tried by jury." A Bill amending the law is now before Parliament, no doubt as a consequence of this situation. The 1920 Act provides in express terms that there shall be a right of trial without a jury in all cases except those named in the Juries Act, 1818, if the Judge thinks that the case cannot be as conveniently tried with a jury as without. Trial by jury in such cases obviously therefore depends to-day upon the view of the Judge as to what is convenient, and he may well think it is inconvenient ever to try such cases with a jury. It is, perhaps, desirable to state that no adequate explanation at any time was given to the House of Commons concerning this vital constitutional matter, and the Bill was introduced in a speech of some seventy words and was dealt with in all its material stages in a few minutes at "three o'clock in the morning." It will not be gainsaid that Parliament at no time in passing this legislation apprehended that it was thus dealing with a fundamental question of the greatest national importance and that by passing such a measure it was thereby striking a damaging blow at one of the greatest and most ancient safeguards. It is, therefore, all the more imperative that the present legislative proposals should be closely scrutinized by Parliament and the public, and particularly by the Legal Profession, not in their own interest, but that of the State. It is remarkable that the provisions of the present Bill now before the House of Commons do not re-establish the right of trial by jury as before the war, but this is certainly not the case. Under the present somewhat curious and conflicting suggestions, a litigant as of absolute right can have a jury to try his suit for breach of promise of marriage, but another citizen, if he brings an action against an omnibus company for damages for personal injury, has no such right. A plaintiff prosecuting some case of slander can have a jury as of right, but not a professional man sued for negligence, although on the result of such a suit his whole reputation and livelihood may well depend. Still stranger still, if an action is commenced in the County Court, the citizens of this country have all their full pre-war rights to trial by jury; if they take proceedings in the High Courts, their rights are circumscribed and curtailed. It is once again proposed, although in another form, that the right to a jury in these cases shall be determined by a Judge—this time in the form of whether the case is more fit to be tried without a jury. In this connection Lord Justice Bankes' words are material: "It is surely not the best way of determining whether a case shall be tried by a jury to leave to what is practically the uncontrolled discretion of a Judge a question upon which individual opinion may so widely differ, and leave it without any indication of the matters which should be taken into consideration in arriving at a decision." No one desires Chancery causes, or cases which deal largely with the prolonged examination of documents or a detailed examination of accounts, to be tried with a jury, or the handing over any other cause from a Judge to a jury, but rather to both Judge and jury.

#### CONCLUSIONS.

Sir Frederick Pollock has written that when a legal formula has served fifteen or twenty generations it has not proved unsuccessful. So far, then, as trial by jury is concerned, we should fully retain it and resist all attempts to recede from a well-tried and, on the whole, despite defects inherent to all human institutions, the best method of justice Englishmen have secured. As regards the Executive, we must equally jealously resist any methods and means which would place them above the law of the land. Concerning the liberty of the subject, we must steadfastly uphold the ancient ruling principle of British Law that no person shall be imprisoned without public charge before the Judges or Magistrates of the Realm. In all these three grave and vital matters there is, it is submitted, ample evidence that we need vigilance and an instructed public opinion at this particular moment in the history of our country. Members of the Legal Profession, despite uninstructed criticism to the contrary, have, irrespective of all personal interests, been foremost throughout our times in upholding liberty and freedom and good government—a trust which they are no less desirous of maintaining to-day.

## BANQUET.

Mr. J. A. PEARCE (President of the Bristol Law Society) took the chair in the evening at a banquet which was held in the Guildhall. Among those present were Sir Henry Duke, Mr. Justice Eve, Sir Claud Schuster, K.C.B., K.C., Mr. J. A. Hawke, K.C., M.P. (Recorder of Plymouth), His Honour Judge Higgins, Mr. R. S. Dibdin (President of the Law Society), Mr. A. P. Dell (President of the Devon and Exeter Law Society), Mr. R. Pearce (President of the Cornwall Law Society) and Mr. Isaac Foote.

Mr. SOLOMON STEPHENS, J.P. (Mayor of Plymouth) proposed the toast "The Imperial Forces," Rear-Admiral H. L. T. Heard, C.B., D.S.O., and Colonel S. E. Holland, C.B., C.M.G., D.S.O., returning thanks.

Mr. ISAAC FOOTE, M.P., submitted the toast of "The Bench and Bar."

Sir HENRY DUKE, in returning thanks, said that the Bench, during some eight centuries, had gained the confidence of the English people and he knew of no position in which a man had greater liberty to serve the State than that of a member of the Bar. Speaking of the public service given by those who sat in the House of Commons, he expressed his pleasure that in an increased degree the solicitor branch of the profession showed that it realised that the conditions of the tenure of public confidence was free and disinterested public service. Sitting, as he did, in the Divorce Court, he had seen how the representatives of the leading firms of solicitors in London and in the country, without more inducement than the sense of public duty, had rendered very great service to poor litigants who would otherwise have been without relief.

Sir CLAUD SCHUSTER, K.C.B., K.C., responding for the Bar, said that the mass of matrimonial cases which followed the war had imposed an almost intolerable burden upon those who practised under the Poor Persons procedure and the system could no longer continue unamended. The system could only exist if it had the active support of the solicitor branch of the profession. But, having gone so far, he thought they could not turn back. They had to choose between some system in which solicitors would take an active and vigorous part and some system of officialism, which he should most deeply deplore, being himself an official and having some knowledge of what management by officials implied. It might be that the solicitors would be well advised to make a sacrifice in order to preserve the administration of the law in the private hands in which it now was and to keep it from any touch of official hands.

Mr. Justice EVE gave the toast of "The Law Society." He referred to the educational facilities provided by the Society, the high standard of efficiency required by the Society's examiners and the part it took in reforming procedure and practice and in codifying the law.

Mr. R. W. DIBDIN (President of the Law Society) responded, and the toast of "The Plymouth Law Society" submitted by Mr. J. A. HAWKE, K.C. (Recorder of Plymouth), Mr. J. A. PEARCE (President of the Plymouth Law Society) returning thanks, brought the proceedings to a close.

## Solicitors' Benevolent Association.

## ANNUAL MEETING.

The annual meeting of this Association took place at the Royal Hotel, Plymouth, on Wednesday, Sir William Bull, one of the directors, presiding.

The report of the directors stated that the Association had now 4,269 members, of whom 1,161 are life and 3,108 annual subscribers. The Association had lost during the year ninety-five subscribers through death and thirty-two through withdrawals. It had obtained 589 new subscribers. The total relief granted during the year amounted to £9,156 2s. 6d., the largest amount yet distributed. This was made up as follows: £7,172 2s. 6d., of which £3,008 10s. was granted to members and families of members, and £4,163 12s. 6d. to non-members and families of non-members. A number of annuities and pensions under various funds in the hands of the Association formed the balance of the sum distributed. The report was unanimously adopted and the directors were re-elected.

## Incorporated Accountants.

The next Examinations of candidates for admission into the Society of Incorporated Accountants and Auditors will be held on 12th, 13th, 14th and 15th November, 1923. Women are eligible under the Society's regulations to qualify as Incorporated Accountants upon the same terms and conditions as are applicable to men.

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## Title to Stolen Goods.

A summons against the Commissioner of Police for detaining two gun-metal wheel steam valves was says *The Times*, heard before Mr. Waddy at the Tower Bridge Police Court on Tuesday, at the instance of Frederick Welch, of Ruby-street, Deptford. The complainant, who described himself as a dealer in tools, was charged at that Court with receiving the valves in question and sentenced by Mr. Waddy to three months' imprisonment. He appealed to the Quarter Sessions, and he was discharged. As he had been proclaimed an innocent man he now claimed the return of the valves, which he had bought in Caledonian Market.

In answer to the Court he admitted that he could not give the name of the man he bought the valves from:

Mr. Thomas Joseph Wyatt, manager of the Metal Hardware Products Company, said the valves, produced, were made in America and imported solely by his firm. They had lost 129 valves a fortnight before the complainant said he had bought them in Caledonian Market. The valves were not sold except to the trade.

Mr. Waddy, addressing the complainant, said he was bound by the decision of a superior Court and accepted the decision that the complainant came there an innocent man; but that did not dispose of this dispute, as, even if bought in market overt, no buyer acquired a title to goods which, having been stolen, were bought at considerably below cost. The summons would be dismissed.

The National Association of Railway Travellers announce that objections to every proposed passenger rate in the schedule lodged by the railway companies are being prepared in consultation with counsel, whose services it is hoped to retain to support the objections before the Tribunal. Subscriptions to the "Fair Fares Fund" are flowing in steadily, and if the public will continue to give support, the association states, there is every prospect that the amount required for the preparation and presentation of the passengers' case will be subscribed. The association suggests that every local authority should entrust to it the lodging of identical objections, so that the same counsel should appeal on behalf of each local authority as well as the association, each authority contributing *pro rata* to the costs.

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## The Irish Deportees.

Lord Ashmore, says *The Times*, presided over a tribunal at Glasgow Sheriff Court on Monday, when a settlement was made on the claims of forty persons in Scotland, mostly Glasgow, for loss and damage due to wrongful arrest and deportation, and for detention in Mountjoy Prison, Dublin, for ten weeks.

Mr. Norman Macpherson, instructed by the Lord Advocate, explained that the forty persons were deported from Scotland under the order referred to in the Indemnity Act. All these persons were entitled to compensation to be assessed and awarded by the tribunal. The Act laid it down that compensation was to be assessed on the principles on which damages would be assessed at Common Law in an action for wrongful imprisonment or assault. In the forty claims before the tribunal altogether £59,435 was claimed. After the claims had been examined and the circumstances of the claimants' detention had been inquired into, he was instructed by Sir James Adam, representing the Treasury, to endeavour to adjust with the claimants figures which might be suggested to their lordships as representing fair and reasonable compensation.

Subject to their lordships' approval, they had reached an agreement as to all the claims, and his friend and he respectfully submitted that agreement in the form of joint minutes for their lordships' consideration in arriving at what would be fair compensation.

They had in each case two things: first, the actual loss sustained by the claimants; and secondly, the solatium in thirty-eight of the cases—that was, in all the cases with the exception of those of Mr. Hutchinson and Mr. Hickey. There was not much difficulty in adjusting the actual loss they had sustained through their deportation and internment. The assessing of a solatium was always a difficult matter. After much discussion, what they did in the thirty-eight cases was to agree to £250 to each claimant as a solatium for deportation and internment. To that sum of £250 they added for each claimant sums ranging from £50 to £100 as a solatium in respect of special considerations applicable to particular claimants. The figures worked out at an average of £317 as a solatium to each of the thirty-eight claimants. When to the solatium was added the actual loss, the average compensation suggested for each of these thirty-eight claimants was £389.

The cases of Mr. Hutchinson and Mr. Hickey were in a different category. Their position as business men justified the Treasury in consenting to larger awards in these two cases. Mr. Hutchinson had lodged a claim for £8,070. Subject to their lordships' approval, they were agreed that £1,500 would be fair compensation in his case. Mr. Hickey's claim was for £1,534. In his case they had agreed to compensation at £750. The joint minutes lodged showed the compensation suggested for each claimant, and the claimants and he were united in asking their lordships to assess the compensation at the figures provisionally agreed on. The total amount of the compensation suggested was £17,098 14s. 10d. Minutes lodged also asked that Mr. Hickey's expenses be fixed at one hundred guineas, and the expenses of the other claimants at twenty-five guineas each.

The Court concurred in the entire settlement.

## THE MIDDLESEX HOSPITAL.

WHEN CALLED UPON TO ADVISE AS TO LEGACIES, PLEASE DO NOT FORGET THE CLAIMS OF THE MIDDLESEX HOSPITAL, WHICH IS URGENTLY IN NEED OF FUNDS FOR ITS HUMANE WORK.

## Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4%. Next London Stock Exchange Settlement, Thursday, 18th October.

	MIDDLE PRICE 3rd Oct.	INTEREST YIELD.
<b>English Government Securities.</b>		
Consols 2½%	58½	4 6 0
War Loan 5% 1929-47 .. .. .	102½	4 17 6
War Loan 4½% 1925-45 .. .. .	97½	4 12 0
War Loan 4% (Tax free) 1929-42 .. .. .	100½	4 0 0
War Loan 3½% 1st March 1928 .. .. .	95½	3 13 0
Funding 4% Loan 1900-90 .. .. .	90½	4 8 0
Victory 4% Bonds (available at par for Estate Duty) .. .. .	92½	4 6 6
Conversion 3½% Loan 1901 or after .. .. .	78½	4 9 0
Local Loans 3% 1912 or after .. .. .	67½	4 8 6
India 5½% 15th January 1932 .. .. .	102½	5 7 0
India 4½% 1950-55 .. .. .	90½	5 0 0
India 3½% .. .. .	69½	5 1 0
India 3% .. .. .	59½	5 1 6
<b>Colonial Securities.</b>		
British E. Africa 6% 1946-56 .. .. .	112	5 7 0
Jamaica 4½% 1941-71 .. .. .	97½	4 12 0
New South Wales 5% 1932-42 .. .. .	100	5 0 0
New South Wales 4½% 1935-45 .. .. .	93½	4 16 6
Queensland 4½% 1920-25 .. .. .	97½	4 12 0
S. Australia 3½% 1926-36 .. .. .	84½	4 3 0
Victoria 5% 1932-42 .. .. .	90½	5 0 6
New Zealand 4% 1929 .. .. .	95xd.	4 4 0
Canada 3% 1938 .. .. .	81	3 14 6
Cape of Good Hope 3½% 1929-49 .. .. .	81	4 6 6
<b>Corporation Stocks.</b>		
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn. .. .. .	56	4 9 0
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn. .. .. .	67	4 10 0
Birmingham 3% on or after 1947 at option of Corpn. .. .. .	66½	4 10 3
Bristol 3½% 1925-65 .. .. .	78½	4 9 0
Cardiff 3½% 1935 .. .. .	88	4 0 0
Glasgow 2½% 1925-40 .. .. .	74	3 8 0
Liverpool 3½% on or after 1942 at option of Corpn. .. .. .	78½	4 9 0
Manchester 3% on or after 1941 .. .. .	66	4 11 0
Newcastle 3½% irredeemable .. .. .	76	4 12 0
Nottingham 3% irredeemable .. .. .	66xd.	4 11 0
Plymouth 3% 1920-60 .. .. .	67xd.	4 10 0
Middlesex C.C. 3½% 1927-47 .. .. .	81	4 6 6
<b>English Railway Prior Charges.</b>		
Gt. Western Rly. 4% Debenture .. .. .	87	4 12 0
Gt. Western Rly. 5% Rent Charge .. .. .	106	4 14 0
Gt. Western Rly. 5% Preference .. .. .	105	4 15 0
L. North Eastern Rly. 4% Debenture .. .. .	85½	4 13 0
L. North Eastern Rly. 4% Guaranteed .. .. .	84	4 15 0
L. North Eastern Rly. 4% 1st Preference .. .. .	83	4 16 0
L. Mid. & Scot. Rly. 4% Debenture .. .. .	87	4 12 0
L. Mid. & Scot. Rly. 4% Guaranteed .. .. .	84½	4 15 0
L. Mid. & Scot. Rly. 4% Preference .. .. .	83	4 16 0
Southern Railway 4% Debenture .. .. .	85½	4 13 6
Southern Railway 5% Guaranteed .. .. .	104	4 16 0
Southern Railway 5% Preference .. .. .	102½	4 17 6

Mr. Ralph Neville, O.B.E., D.L., J.P., of Banstead, Surrey, barrister, and Deputy-Chairman of the Surrey Quarter Sessions, who died on 8th May last, aged fifty, only son of the late Mr. Justice Neville, left unsettled property in his own disposition of the gross value of £62,463, with net personalty £52,072. Among numerous charitable bequests, he gave £400 to the Banstead Commons Conservators in memory of his father's Chairmanship of that body, "trusting that those who have had the benefit of this beautiful open country will do likewise and not rest content until the Conservators are put in possession of funds so substantial that they can really carry out the care and superintendence of all the commons in this locality which is now increasing in population."

## The Rent Restrictions Act.

### NEW TENANTS' PROTECTION ASSOCIATION.

The new Rent Act has led to the formation of the Tenants' Protection Association not only to scrutinize any proposed legislation affecting tenants' interests, but also to provide free advice on all matters connected with their tenancies. It is pointed out by the association that the new Act renders it considerably easier for landlords to get possession, and offers them a great inducement to do so, inasmuch as it provides that where a landlord secures an order for possession, for any reason other than non-payment of rent, the house becomes decontrolled, and he can then charge any rent he wishes. Under the old Acts, this inducement did not exist.

The association gave a luncheon on Tuesday at Anderton's Hotel, Fleet-street. Mr. E. G. Hemmerde, K.C., M.P., who presided, said that tenants should not only seek advice about the future, but, if wise, also about the past, because in many cases they had been paying rent which they were not obliged to pay. A strong organisation like the association was needed, and was of real urgent public importance.

Mr. S. Waller (director) stated, in regard to the over-payment of rent, that out of one hundred people he had called upon, eighty were paying more rent than they should pay. The association was prepared, in the event of poor people having a legitimate case, to fight their case without charge.

## Obituary.

### Mr. W. T. Barnard, K.C.

Mr. William Tyndall Barnard, K.C., Registrar of the Probate and Divorce Court, died at Blackheath last Sunday, aged sixty-eight. He underwent an operation last Wednesday week, and peritonitis supervened.

Mr. Barnard was called to the Bar in 1879 by Gray's Inn, of which he afterwards became a Bencher and Treasurer, and, devoting himself to the Divorce Court, he was not long in acquiring a considerable practice. He had, says *The Times*, a plain, blunt, easy manner, and always a good-natured method in the conduct of cases. He became popular rapidly, and before he took silk it was said that his fees amounted to more than £8,000 a year. He was called within the Bar in 1905, and after the temporary retirement of Mr. Priestley, K.C., he became the leader of the Probate and Divorce Court Bar. He withdrew from practice in 1915, when he accepted the position of Registrar of the Probate and Divorce Division.

While he was in practice, Mr. Barnard appeared in many cases which have not only found their way into the Law Reports, but have remained in the public memory. He held a brief with Sir Robert (now Lord) Finlay in the famous appeal *Scott v. Scott*, in which the House of Lords decided that it was not a contempt of Court to disclose the details of a nullity suit heard *in camera*, and in which Lord Shaw expressed the opinion that the Courts had no jurisdiction to hear such suits *in camera*. He also appeared in the suit which arose out of the will of Sir John Murray Scott, who inherited the fortune of Lady Wallace, and who left bequests to Lady Sackville which were challenged. Mr. Barnard was the eldest son of Mr. W. T. Barnard, a member of the Bar, and his mother was a granddaughter of Mr. Richard Jeune. His son, Mr. H. Barnard, practises in the Divorce Court.

The funeral took place on Wednesday, and was attended by numerous legal and local friends. The first portion of the service was said in Christ Church, Lee Park, Blackheath, where at one time Mr. Barnard served as a sidesman. The Rev. W. P. McDonald, the former vicar of the church, officiated, and the principal mourners were Mr. H. W. Barnard and Mr. R. P. Barnard (sons), and the Rev. J. Barnard (Vicar of Rochford, Essex). Among those also present were: Mr. J. C. Priestley, K.C., Mr. Edward Duke (Secretary to the President of the Probate and Divorce Division), Mr. Registrar Inderwick, Mr. Norbury from the Probate and Divorce Registry, the Rev. E. C. Blaxland (Vicar of Christ Church), Mr. D. W. Douthwaite, Under-Treasurer of Gray's Inn, representing the Masters of the Bench of that Society, Mr. John Withers, Mr. W. O. Willis, and Mr. H. Dinwiddy.

Among the many wreaths sent were tokens from: Lord Riddell, Sir Henry Duke, Sir Plunkett Barton, the Barristers of the Probate and Divorce Division, the Registrars and staff of the Probate and Divorce Registry, the Benchers of Gray's Inn, Mr. J. Harvey Murphy, K.C., Mr. and Mrs. Priestley, Mr. and Mrs. Willis, Mr. and Mrs. Dinwiddy, Mr. Barnard's servants and gardener, and numerous friends in the neighbourhood.

The burial took place at Charlton Cemetery, where at the graveside the committal sentences were read by the Rev. J. Barnard.

### Mr. W. E. Farr.

Mr. William Edward Farr, C.B.E., died at Harrogate on Tuesday, 2nd October, aged fifty. The eldest son of Albert Hart Farr, of Hitchin, he was a well-known solicitor of Leeds. Having served his articles with Messrs. Hair and Co., he was admitted in 1897, and became a member of the firm of Booth, Wade, Farr, Lomas-Walker and Foster. He was a past President of the Leeds Incorporated Law Society, an Alderman of the City, Vice-Chairman of the Education Committee, Chairman of the Higher Education Committee, and Hon. Secretary of the Leeds Luncheon Club. A keen Liberal, he was Hon. Secretary of the Leeds Liberal Federation, and served for twelve years, from 1907 to 1919, on the executive of the National Liberal Federation. During the war he was Chairman of the Leeds Parliamentary Recruiting and Military Advisory Committees and National Service representative at the Leeds Appeal Tribunal, and was afterwards Chairman of the Leeds Employment Committee, receiving the C.B.E. for his services. He married Hilda Lomas-Walker, of Harrogate, and had one son.

### Mr. J. R. W. Bros.

Mr. James Reader White Bros., who was for thirty-three years a Metropolitan Police magistrate, died on Tuesday of pneumonia at his son's residence, Eastington Manor, Northleach, aged eighty-two. The third son of Thomas Bros., a member of the Bar, he was sent to Rugby, and then went up to St. John's, Cambridge, where he took his degree, and was called by the Inner Temple in 1866. He went the Oxford Circuit, and was appointed Recorder of Abingdon in 1878. Ten years later he began his long service on the Metropolitan Bench, being appointed to the joint courts of Clerkenwell and North London. Almost invariably he sat at Clerkenwell, and when he retired in 1921 there were general expressions of regret. Mr. Bros married, in 1871, Emily Spearman, daughter of Anthony Wilkinson, of Coxhoe Hall, Durham; she died in 1921.

### Mr. Henry Glen Arnott.

Mr. Henry Glen Arnott, Solicitor, of 3, London Wall Buildings, E.C., died at Westcliff on the 26th ult., aged fifty-four. He was a member of the firms of Jenkins Baker & Co. and Clements, Williams & Co., and also of Fullove, Arnott & Co.

## THE HOSPITAL FOR SICK CHILDREN,

GREAT ORMOND STREET, LONDON, W.C.1.

### ENGLAND'S GREATEST ASSET IS HER CHILDREN.

THE need for greater effort to counterbalance the drain of War upon the manhood of the Nation, by saving infant life for the future welfare of the British Empire, compels the Board of Management of The Hospital for Sick Children, Great Ormond Street, London, W.C.1, to plead most earnestly for increased support for the National work this Hospital is performing in the preservation of child life.

The children of the Nation can truthfully be said to be the greatest asset the Kingdom possesses, yet the mortality among babies is still appalling.

FOR 71 years this Hospital has been the means of saving or restoring the lives and health of hundreds of thousands of Children, and of instructing Mothers in the knowledge of looking after their children.

£12,000 has to be raised every year to keep the Hospital out of debt.

Forms of Gift by Will to this Hospital can be obtained on application to—

JAMES McKAY, Secretary.

## Court Papers.

Crown Office, 22nd September, 1923.

Days and places fixed for holding the Autumn Assizes, 1923:—

### OXFORD CIRCUIT.

Mr. Justice Shearman.

Saturday, 13th October, at Reading.  
Thursday, 18th October, at Oxford.  
Monday, 22nd October, at Worcester.  
Friday, 26th October, at Gloucester.  
Wednesday, 31st October, at Monmouth.  
Monday, 5th November, at Hereford.  
Thursday, 8th November, at Shrewsbury.  
Tuesday, 13th November, at Stafford.

### NORTHERN CIRCUIT.

Mr. Justice Salter.

Mr. Justice Branson.

Monday, 22nd October, at Carlisle.  
Wednesday, 31st October, at Lancaster.  
Monday, 5th November, at Liverpool.  
Monday, 26th November, at Manchester.

### MIDLAND CIRCUIT.

Mr. Justice Roche.

Monday, 15th October, at Aylesbury.  
Thursday, 18th October, at Bedford.  
Monday, 22nd October, at Northampton.  
Thursday, 25th October, at Leicester.  
Wednesday, 31st October, at Lincoln.  
Tuesday, 6th November, at Nottingham.  
Saturday, 10th November, at Derby.  
Thursday, 15th November, at Warwick.

Mr. Justice Shearman.

Mr. Justice Roche.

Thursday, 29th November, at Birmingham.

### SOUTH-EASTERN CIRCUIT

(First portion).

Mr. Justice Rowlatt.

Monday, 15th October, at Cambridge.  
Friday, 19th October, at Norwich.  
Wednesday, 24th October, at Bury St. Edmunds.  
Monday, 29th October, at Chelmsford.

### NORTH WALES AND CHESTER CIRCUIT.

Mr. Justice Coleridge.

Monday, 15th October, at Carnarvon.  
Thursday, 18th October, at Ruthin.  
Tuesday, 23rd October, at Chester.

## Legal News.

### Appointment.

MR. W. A. PLUNKETT, of Messrs. Leader, Plunkett & Leader, has been appointed a Commissioner of the High Court of Judicature at Madras, for Great Britain.

### Dissolutions.

HEPSLEY CRABTREE DUCKWORTH, and DAVID CAROLAN EVANS, Solicitors, 208, High-street, Brentford, Middlesex

(Hepsley C. Duckworth & Co.), 22nd day of September. Such business will be carried on in the future by the said David Carolan Evans under the style or firm of Hepsley C. Duckworth and Co. [Gazette, 28th Sept.]

ARTHUR FRANK ALCOCK and KENNETH GILL SMITH, Solicitors, 52, High-street, Evesham (Alcock & Gill Smith), 29th day of September. The said K. Gill Smith will continue to carry on the practice at 52, High-street, aforesaid, and the said Arthur Frank Alcock will practice at Knowle-hill, Evesham. [Gazette, 2nd Oct.]

### General.

The following In Memoriam notice appeared in *The Times* of 28th September:—**CORDERY.**—To the joyous and beloved memory of Arthur Cordery, Barrister-at-Law, New-square, Lincoln's Inn, who died a year ago to-day, aged 74. When he died we lost one of our youngest and most amusing companions.

Mr. Walter James Sloan, of Bristol, of Messrs. Burges and Sloan, solicitors, who died on 5th August, left £11,248, with net personalty £9,542.

Mr. William Baddiley, of Doncaster, solicitor, Clerk to the Doncaster Borough Justices, left estate of gross value £35,116 (net personalty £27,312).

Mr. Arthur Edward Abrahams, of Gloucester-place, Portman-square, W., and of Austin Friars, E.C., solicitor, left estate of gross value £20,964 (net personalty £20,264).

At Whitechapel County Court, on the 1st inst., Judge Cluer refused to decide that a jury should be dispensed with in a case mentioned before him, and added: "Men have a common law right to a jury, and it has been improperly interfered with by statute."

Mr. Daniel Clarke, J.P., of High Wycombe, Bucks, retired solicitor, three times Mayor of High Wycombe, and for nearly forty years Town Clerk of the borough, who died on 17th August last, aged eighty-seven, left estate of the gross value of £88,475, with net personalty £71,713. He left £100 to the High Wycombe and Earl of Beaconsfield Memorial Cottage Hospital.

*The Times* correspondent at Paris, in a message of 1st October, says: The President of the Association of Professional Journalists of Normandy has written to the Minister of Justice urging that "in the public interest journalists ought to have the right to professional secrecy." He also expressed the hope that parliamentary action would be taken to amend the Codes of Justice in this sense. The action of the association is being taken in respect of a fine inflicted on one of its members, the editor of the *Dépêche de Cherbourg*, for refusing to state in the public court the source of information which he had published. Two other Press organizations, the Association des Informations Judiciaires Parisiennes and the Syndicat de la Presse Coloniale, have joined in representations to the Minister of Justice urging that the protection of Article 378 of the Penal Code, which makes professional secrecy obligatory in the case of doctors and other classes of persons, should be interpreted as including journalists.

**VALUATIONS FOR INSURANCE.**—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert Valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-à-brac a speciality. [ADVT.]

# THE LICENSES AND GENERAL INSURANCE CO., LTD.,

conducting Fire, Burglary, Loss of Profit, Employers' Fidelity, Glass, Motor, Public Liability, etc.

**LICENSE INSURANCE.**

SPECIALISTS IN ALL LICENSING MATTERS.

Suitable Clauses for Insertion in Leases and Mortgages of Licensed Property settled by Counsel will be sent on application.

FOR FURTHER INFORMATION WRITE: **24, 26 & 28, MOORGATE, E.C.2.**

## Winding-up Notices.

## JOINT STOCK COMPANIES.

## LIMITED IN CHANCERY.

CREDITORS MUST SEND IN THEIR CLAIMS TO THE LIQUIDATOR AS NAMED ON OR BEFORE THE DATE MENTIONED.

*London Gazette.*—TUESDAY, September 25.

THE SPERMIA SHIPPING CO. LTD. Oct. 31. Arthur B. Mayes, 6, East India Avenue, E.C.

POWELL & RICKETTS LTD. Nov. 7. Alfred J. Moss, Cardwell-chambers, Marsh-st., Bristol.

THE ROX CO. LTD. Oct. 31. R. Spasman Farries, 8, Laurence Pountney-hill, E.C.4.

VICTORIA PIER & PAVILION CO. (COLWYN BAY) LTD. Oct. 20. Peter Gregson, 44, Brown-st., Manchester.

CHARLES BRADY & CO. LTD. Oct. 25. John G. Godwin, 195, Strand, W.C.2.

WESTERN CHEMICAL CO. LTD. Oct. 12. William Moore, 9, Clifford-st., W.1.

*London Gazette.*—FRIDAY, September 28.

NORTHERN BOATBUILDING CO. LTD. Oct. 31. Thomas R. G. Rowland, of Messrs. W. T. Walton & Son, West Hartlepool.

C. H. NUTTER & CO. LTD. Nov. 7. Ernest G. Westmore, 2, Albert-rd., Colne.

BOROUGH LAUNDRY (ACCRINGTON) LTD. Oct. 12. James G. Bradshaw, 21, The Square, Saint Annes-on-the-Sea.

KIRK & KIRK LTD. Oct. 31. William H. Yates, New Walk-gates, Leicester.

THE ROLAND TRUST CO. LTD. Oct. 10. Owen F. Johnson, 62, New Broad-st., E.C.2.

C. I. HOOD & CO. LTD. Oct. 31. A. F. M. Edwards, 1 & 2, Snow-hill, E.C.1.

ERNEST ROBERTSON & CO. LTD. Oct. 22. E. A. Helmore, Liquidator.

THE OIL STORAGE EQUIPMENTS CO. LTD. Oct. 31. Maurice Jenks, 6, Old Jewry, E.C.2.

*London Gazette.*—TUESDAY, Oct. 2.

WHITE'S (LUTON) LTD. Oct. 23. A. G. F. Machin, George-st. West, Luton, Solicitor to the Liquidators.

CAMP CATERING CO. LTD. Oct. 27. Henry W. Clark, 22, Triton-rd., West Dulwich.

THE ORCHARD GARAGE LTD. Oct. 17. Herbert J. Bennett, Bath House, Holborn-viaduct, E.C.

## Resolutions for Winding-up Voluntarily.

*London Gazette.*—FRIDAY, September 21.

M. W. Syndicate Ltd. The Birmingham Radio and The Central Colliery (Buck-nall) Ltd. Engineering Co. Ltd.

Northern Boatbuilding Co. Ltd. Welton Rovers Football and Sports Co. Ltd.

The London & Chicago Contract Corporation Ltd. The Knighton Public Hall Co. Ltd.

The Midlands Steel Co. of Philadelphia & London Ltd. Lorries Ltd.

The Gladstone Club Building Co. Ltd. Marlboro' Brush Co. Ltd.

D. Martie Accumulators Ltd. The City of London Contract Corporation Ltd.

Kipton Burnett Ltd. The Capital Share and General Guarantees Co. Ltd.

Pontagnalla Valley Ceylon Co. Ltd. Griffin Mills (Gloves) Ltd.

Thomas Barron Ltd. Deep S-S Fishing Co. Ltd.

Fro: Wire Light Co. Ltd. J. Coleman Gittins Ltd.

Park Green Dye Works Ltd. A. R. Dawson & Co. Ltd.

The Rhonda Engineering and Mining Co. Ltd. The Rhonda Engineering and Mining Co. Ltd.

*London Gazette.*—TUESDAY, September 25.

The Shaka Salt Co. Ltd. Fielding Mercer & Sons Ltd.

The Manchester Hardware Co. Ltd. The Surrey Farmers Direct Co. Ltd.

W. Saunders & Co. (Bakery Suppliers) Ltd. Meat Supply Society Ltd.

Clapson & Co. Ltd. Newcastle Graphite Co. Ltd.

A. Sims & Co. (Cardiff) Ltd. Crichton, Thompson & Co. Ltd.

Victory Rubber Co. Ltd. Alliance Debuture Corporation Ltd.

Wadsworth & Spencer Ltd. Kays (Leigh) Ltd.

The Alderley Edge Public Hall Co. Ltd. Radmill Lamps Ltd.

Waring Brothers Ltd. Michael Jeffrey & Co. Ltd.

Bancock & Co. (New Zealand) Ltd. Atkinson Bros. (Leeds) Ltd.

Western Chemical Co. Ltd. The Spermia Shipping Co. Ltd.

Deesbury Motor Haulage & Hiding Co. Ltd. T. A. Chisholm Ltd.

W. G. Hobbs & Co. Ltd.

Eccles Tool Manufacturing Co. Ltd.

*London Gazette.*—FRIDAY, September 28.

Shipman, Mackay & Co. Ltd. Kiwi Motor Engineers Ltd.

The Clayton Athletic Club Co. Ltd. Edwards (Dartford) Bakeries & Confectioneries Ltd.

Decker & Wilkinson Ltd. Small, Brown & Co. Ltd.

The R-hill Colliery Co. Ltd. Hooking Stores Ltd.

Magnet Films Ltd. Positif Ltd.

The East Endmolesey Coal Co. Ltd. Albion Rubber Co. Ltd.

Kirk & Kirk Ltd. Cherry Tree Garage (Co.) Ltd.

Pine's Soap Co. Ltd. Photographs (Birmingham) Ltd.

Robinson (Aldrichman) Ltd. Lion, Drenner & Co. Ltd.

Rodern Marine Transport Co. Ltd. The Oil Storage Equipments Co. Ltd.

T. & E. Lofthouse Ltd. C. I. Hood & Co. Ltd.

Buys Stores Ltd. Clowes & Platts Ltd.

The Railhead Launch & Boat Co. Ltd. British Industries Fair (Birmingham) Incorporated.

## Bankruptcy Notices.

## RECEIVING ORDERS.

*London Gazette.*—FRIDAY, September 28.

BERRESFORD, EDWARD, Chesterfield, Cycle Agent. Chesterfield. Pet. Sept. 24. Ord. Sept. 24.

BLOCKLEY, HEZEKIAH D., Chesterfield, Miner. Chesterfield. Pet. Sept. 24. Ord. Sept. 24.

BREATHWAITE, PERCY D., Widnes, Draper. Liverpool. Pet. Sept. 7. Ord. Sept. 26.

BROWN, Commander GEORGE S., Chelsea. High Court. Pet. Aug. 29. Ord. Sept. 24.

CAPALDI, FILIPPO, Southsea, Ice Cream Merchant. Portsmouth. Pet. Sept. 24. Ord. Sept. 24.

COLEMAN, HORACE, 65, Victoria-st. High Court. Pet. July 24. Ord. Sept. 26.

CRIPPS, A. & C., Southall, Builders. Windsor. Pet. Aug. 22. Ord. Sept. 26.

CULLES, ROWLEY J. B., Bournemouth, Motor Engineer. Poole. Pet. Sept. 25. Ord. Sept. 25.

CULVER, EDWARD C., Aylesbury, Sports Groundsman. Aylesbury. Pet. Sept. 26. Ord. Sept. 26.

D'ACRIOL, JAMES C. V., Harrow-rd., Dyer and Cleaner. High Court. Pet. Aug. 15. Ord. Sept. 24.

DAVISON, GEORGE, North Ferryby, Yorks. Pharmacist. Kingston-upon-Hull. Pet. Sept. 26. Ord. Sept. 26.

EDWARDS, ARTHUR S., Shouldham, Norfolk, Baker. King's Lynn. Pet. Sept. 25. Ord. Sept. 25.

FEAR, HURMAN H., Combech, Somerset, Grocer. Bridgewater. Pet. Sept. 24. Ord. Sept. 24.

GRAHAM, JOSEPH, York, Haulage Contractor. York. Pet. Sept. 26. Ord. Sept. 26.

HANNEN, ARTHUR E., Colwyn Bay, Carter. Bangor. Pet. Sept. 25. Ord. Sept. 25.

HARRIES, A. V., Pembroke, General Draper. Haverfordwest. Pet. Sept. 7. Ord. Sept. 24.

HENSLOR, T. G. W., Temple Chambers, E.C., Journalist. High Court. Pet. July 23. Ord. Sept. 26.

HEY, EDGAR, Litchwalle, near Huddersfield, Farmer. Huddersfield. Pet. Sept. 24. Ord. Sept. 24.

HICKSON, GEORGE, Great Grimshy, Agricultural Carpenter. Great Grimshy. Pet. Sept. 26. Ord. Sept. 26.

HORNE, JAMES, near Bridgnorth, Farmer. Shrewsbury. Pet. Sept. 24. Ord. Sept. 24.

HYDE, Captain ROWLEY, Brighton. Brighton. Pet. July 25. Ord. Sept. 25.

JACOBSON, ALFRED E., Great Grimshy, late Fish Merchant. Great Grimshy. Pet. Sept. 15. Ord. Sept. 24.

KELLAWAY & Co., Kingston-upon-Hull, Estate Agents. Kingston-upon-Hull. Pet. Sept. 11. Ord. Sept. 24.

KNOWLES, ALFRED, Bradford, Paper Stock Merchant. Bradford. Pet. Sept. 25. Ord. Sept. 25.

LAST, EDWARD V., Ipswich, Taxi-Cab Proprietor. Ipswich. Pet. Sept. 21. Ord. Sept. 21.

LEVISON, ABRAHAM, Denmark-hill, Camberwell, Dentist. High Court. Pet. Aug. 20. Ord. Sept. 20.

MANDER, GEORGE, Brakes, Warwick, Small Holder. Worcester. Pet. Sept. 26. Ord. Sept. 26.

MARCHANT, FRED, Horfield, Bristol, Furniture Remover. Bristol. Pet. Sept. 26. Ord. Sept. 26.

MAYNARD, HARRY A., Richmond, Surrey, Secretary and Accountant. Wandsworth. Pet. Sept. 26. Ord. Sept. 26.

MCLAREN, CASSIMIRA C. DE L., Blas, Brighton, Builder. Brighton. Pet. Sept. 10. Ord. Sept. 25.

MILLS, MATTHEW, Rochdale, Licensed Victualler. Rochdale. Pet. Sept. 24. Ord. Sept. 24.

MORRIS, JAMES W., Melton Mowbray, Rubber Worker. Leicester. Pet. Sept. 26. Ord. Sept. 26.

NAERUM, ANDREW & Co., Liverpool. Liverpool. Pet. Aug. 4. Ord. Sept. 24.

NAYLOR, ERNEST W. E., Bilston, Fruiterer. Wolverhampton. Pet. Sept. 26. Ord. Sept. 26.

NEALE, ALFRED S., Southwark, Draper. High Court. Pet. Aug. 30. Ord. Sept. 26.

OGLESBY, PAUL, Wye, Kent, Instructor of Agriculture. Canterbury. Pet. Sept. 25. Ord. Sept. 25.

PAYNE, FREDERICK R., Swindon, Wholesale Pastry Cook. Swindon. Pet. Sept. 24. Ord. Sept. 24.

PEARL, RALPH, Middleton-in-Teesdale, Café Proprietor. Stockton-on-Tees. Pet. Sept. 24. Ord. Sept. 24.

PREVAL, ALBERT, Castelford, Poultry Dealer. Wakefield. Pet. Sept. 24. Ord. Sept. 24.

QUICK, GORDON C. M., Ilford, Essex, Cinematograph Theatre Proprietor. High Court. Pet. Sept. 26. Ord. Sept. 26.

RICHMOND, GRACE, Nottingham, Furniture Dealer. Nottingham. Pet. Sept. 24. Ord. Sept. 24.

ROBERTS, JOSEPH T., and ROBERTS, EDGAR, Birmingham, Gun Makers. Birmingham. Pet. Sept. 24. Ord. Sept. 24.

RUSSELL, JOHN H., Chatham, Musical Director. Rochester. Pet. Sept. 25. Ord. Sept. 25.

SCRASE, WILLIAM J., near Bursledon, Hants, Builder. Southampton. Pet. Sept. 11. Ord. Sept. 25.

STEVENET, EMIL, Albany-st., Regents Park, High Court. Pet. Aug. 23. Ord. Sept. 20.

STEWART, WILLIAM J., Manchester, Motor Engineer. Manchester. Pet. Sept. 25. Ord. Sept. 25.

TAYLOR, ROBERT, Stanley, Durham, Coal Miner. Newcastle-upon-Tyne. Pet. Sept. 25. Ord. Sept. 25.

THOMPSON, ERNEST, Blaby, Leicester, Clerk. Leicester. Pet. Aug. 27. Ord. Sept. 24.

VALE, JOHN C., Stoke Newington-rd., Edmonton. Pet. Sept. 22. Ord. Sept. 22.

VALE, LILLIAN M., Stoke Newington-rd., Proprietress Public House. Edmonton. Pet. Sept. 22. Ord. Sept. 22.

VAN RYNSVELD, NIEL, Motor Engineer, Cheltenham. Cardiff. Pet. Sept. 24. Ord. Sept. 24.

WAIDE, GEORGE, Leeds, Cooper's Manager. Leeds. Pet. Sept. 24. Ord. Sept. 24.

WHALLEY, ROBERT, Upholland, Lancs, Farmer. Wigan. Pet. Sept. 26. Ord. Sept. 26.

WINTERBURN, JOSEPH, York, Hawker. York. Pet. Sept. 24. Ord. Sept. 24.

Amended Notice substituted for that published in the *London Gazette* of 25th September, 1923.

HARRIS, FRANCIS E., Westgate-on-Sea. Canterbury. Pet. Sept. 1. Ord. Sept. 22.

*London Gazette.*—TUESDAY, October 2.

ALTER, MORRIS, Stepney, Furrier. High Court. Pet. Sept. 23. Ord. Sept. 28.

BARKER, SAMUEL, Wigan, Grocer. Wigan. Pet. Sept. 29. Ord. Sept. 29.

BARNES, CHARLES E., Poole, Dorset, Boat Builder. Poole. Pet. Sept. 27. Ord. Sept. 27.

BARRANS, RAYMOND, Bradford, Grocer. Bradford. Pet. Sept. 27. Ord. Sept. 27.

BESWICK, JOSEPH, Borrowash, Derby, Plumber's Labourer. Derby. Pet. Sept. 27. Ord. Sept. 27.

CASSIDY, KETTERING E., Cheapside. High Court. Pet. Aug. 15. Ord. Sept. 28.

COLLETT, WILLIAM, Warboys, Hunts., Smallholder. Peterborough. Pet. Sept. 28. Ord. Sept. 28.

COXON, WILFRED H., Newcastle-upon-Tyne, Confectioner. Newcastle-upon-Tyne. Pet. Aug. 29. Ord. Sept. 25.

CUNDLIFE, GEORGE, Horwich, near Bolton, Farmer. Bolton. Pet. Sept. 28. Ord. Sept. 28.

DAVIS, GERALD W., Highbridge, Tailor. Bridgewater. Pet. Sept. 28. Ord. Sept. 28.

DIGHTON, FRANCIS H. L., Lowestoft, Solicitor. Norwich. Pet. July 26. Ord. Sept. 28.

ECHELSON, JOHN W., South Shields, General Dealer. Newcastle-upon-Tyne. Pet. Sept. 29. Ord. Sept. 29.

FRAYER, JEROME, Hampton. Kingston. Surrey. Pet. Aug. 21. Ord. Sept. 27.

GAVETA, CHARLES E., Hackney, Merchant. High Court. Pet. Sept. 28. Ord. Sept. 28.

GIBBINS, JOHN, Spilaby, Draper. Boston. Pet. Sept. 20. Ord. Sept. 26.

HARRISON, THOMAS A., Ilkley, Motor Garage Proprietor. Leeds. Pet. Sept. 27. Ord. Sept. 27.

HARTLEY, ALICE, Nelson, Restaurant Keeper. Burnley. Pet. Aug. 23. Ord. Sept. 28.

HOUSTON, HENRY J., Bushey. St. Albans. Pet. July 28. Ord. Sept. 19.

HUNT, JOHN C., Basingstoke, Estate Carpenter. Guildford. Pet. Sept. 29. Ord. Sept. 29.

IRELAND, LIONEL, Hadlow, near Tonbridge, Licensed Victualler. Tunbridge Wells. Pet. Sept. 12. Ord. Sept. 25.

JENNINGS, CHARLES W., Darlington, Motor Salesman. Stockton-on-Tees. Pet. Sept. 28. Ord. Sept. 28.

JONES, ARTHUR, Oxford-st. High Court. Pet. July 13. Ord. Sept. 26.

JONES, ERIC W., Romiley, Chester, Builder. Ashton-under-Lyne. Pet. Sept. 11. Ord. Sept. 27.

JONES, JOHN R., Newport, Timber Merchant. Newport (Mon.). Pet. Sept. 28. Ord. Sept. 28.

LAW, RICHARD, Shipley, Commercial Clerk. Bradford. Pet. Sept. 27. Ord. Sept. 27.

LYNN, JOHN T., Wisbech St. Peter, Cycle Agent. King's Lynn. Pet. Sept. 27. Ord. Sept. 27.

MATTHEWS, GLYS, Pontardulais, Carmarthen. Pet. July 24. Ord. Sept. 28.

MITCHELL, HAROLD J., Farnborough, Guildford. Pet. Aug. 13. Ord. Sept. 27.

MORRISON, JOHN S., Manchester. Salford. Pet. Aug. 23. Ord. Sept. 28.

OWEN, WALTER, Bangor, Grocer. Bangor. Pet. Sept. 20. Ord. Sept. 26.

PARSLOW, FRANK, Formby, Lancs, Surveyor. Liverpool. Pet. June 29. Ord. Sept. 17.

PEARSE, EDWARD G., Worcester, Paper Merchant. Worcester. Pet. Sept. 28. Ord. Sept. 28.

PRESOTT, HARRY, Oldham, Publican. Ashton-under-Lyne. Pet. Sept. 14. Ord. Sept. 27.

PRYKE, SAMUEL, Middlesbrough, Butcher. Middlesbrough. Pet. Sept. 29. Ord. Sept. 29.

QUANTRELL, ALFRED E., Leytonstone. High Court. Pet. Aug. 15. Ord. Sept. 27.

REEDER, HENRY, Sheffield, BUILDER & REEDER, Byworth. Sheffield. Pet. Sept. 28. Ord. Sept. 28.

RICHARDSON, GEORGE A., Weston-super-Mare, Motor Garage Proprietor. Bridgewater. Pet. Sept. 13. Ord. Sept. 27.

ROBERTS, CECIL T., Ruthin, Accountant. Wrexham. Pet. Sept. 10. Ord. Sept. 28.

ROBERTS, EDWARD R., Llanfair-yng-browny, near Valley, Labourer. Bangor. Pet. Sept. 14. Ord. Sept. 28.

ROSENBERG, SAMUEL, Poplar, Jeweller. High Court. Pet. Sept. 5. Ord. Sept. 27.

SAUNDERS, J. H., City-rd., Provision Merchants. High Court. Pet. Aug. 20. Ord. Sept. 27.

SAUNDERS, HUGH, Loughor, Glam., Butcher. Carmarthen. Pet. Sept. 22. Ord. Sept. 22.

SECHFIELD, GEORGE, the Elder, Terrington Saint Clement, Norfolk, Farmer. King's Lynn. Pet. Sept. 29. Ord. Sept. 29.

SHAW, WALTER E., Sheffield, Gents' Outfitter. Sheffield. Pet. Sept. 27. Ord. Sept. 27.

SMART, HENRY, Frome, Somerset, General Dealer. Frome. Pet. Sept. 27. Ord. Sept. 27.

SMITH, PETER, and SMITH, ALICE M., Fenton, Stoke-on-Trent, Tobaccoists. Hanley. Pet. Sept. 28. Ord. Sept. 28.

SOWDEN, FRED B., Scarborough, Grocer. Scarborough. Pet. Sept. 28. Ord. Sept. 28.

TATTERSALL, JAMES R., Cleckheaton, Brace Manufacturer. Bradford. Pet. Sept. 27. Ord. Sept. 27.

TOMLINSON, HERBERT H., Askrin, near Doncaster, Wheelwright. Sheffield. Pet. Sept. 28. Ord. Sept. 28.

TUNER, EMANUEL, Hednesford, Grocer. Walsall. Pet. Sept. 28. Ord. Sept. 28.

WARREN, W. RUSSELL, Gokkers Green. High Court. Pet. Aug. 9. Ord. Sept. 27.

WEBB, ELIZABETH, Sheffield, Confectioner. Sheffield. Pet. Sept. 27. Ord. Sept. 27.

WOODHEAD, ARTHUR, Nelson, Licensed Victualler. Burnley. Pet. Sept. 23. Ord. Sept. 28.

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